

THE ALIPORE BOMB TRIAL

BY
BEJOY KRISHNA BOSE,
VAKIL.

WITH A FOREWORD BY
MR. EARDLEY NORTON, Bar-at-Law.

CALCUTTA

BUTTERWORTH & CO. (INDIA), LTD. 6, HASTINGS ST.

LONDON :

BUTTERWORTH & Co. BELL YARD,

TEMPLE BAR.

WELLINGTON (N. Z.)

BUTTERWORTH & Co. (Australia), Ltd.

SYDNEY :

BUTTERWORTH & Co. (Australia), Ltd.

WINNIPEG :

BUTTERWORTH & Co. (Canada), Ltd.

Law Publishers.

1922

PREFACE.

As one who appeared for the accused from the very beginning to the end of the Trial in all the Courts and was possessed of all the materials for bringing out in book form a narrative of the trial which would interest the public I long desired to sit down and edit the book—but want of the requisite time, always stood in the way for many a long year. I now place it before the public in the hope that they will derive some pleasure and instruction from its perusal. The Alipur Bomb Trial was the first State Trial of any magnitude in India, because it was held at a time when discontent reached its highest point in Bengal and it concerned people who were gentlemen belonging to the best society, cultured, educated and highly intelligent. The novelty of the cult of the bomb and shooting and assassination of men of high position lent an additional interest to the trial which reached its highest pitch when articles from the *Sandhya* and the *Jugantar*, couched in rich and powerful language and breathing intense hatred for foreigners and impassioned love of freedom from bondage, were put in and read in Court as evidence of proving conspiracy to wage war against the King. If all these ~~are~~ brought out in book form, ten volumes will not afford sufficient space for a complete history of the trial. Besides, considering the present character of contemporary events, when gigantic world problems are awaiting solution, when we hear the tread of centuries in the march of a single year, when India of 1922 and her problems are very different from the

India of 1908, people will not have the time and the patience to go through volume after volume to read the full history of a trial however remarkable it might be. I have, therefore, been forced to crowd into one volume all that is necessary, all that is interesting and all that one needs to learn about this memorable Trial. Verbatim reports of evidence in chief and cross-examination of witnesses were impossible, so a summary of their evidence has been given. In a few cases where the evidence was considered important, detailed reports of the same have been incorporated.

My thanks are due to the publishers for the great interest shewn in seeing the book through the Press.

28, Hazra Lane,	}	BEJOY KRISHNA BOSE.
CALCUTTA,		
1st November, 1922.		



Sriut Bijoy Krishna Bose, Vakil

FOREWORD.

A publication intended to reproduce authentic reports of some of the more outstanding criminal trials attests its own merits and needs no foreword from me or any one else. As I chanced to lead for the Crown in the trial related in this volume in all three Courts—the Magistrate's, the Sessions Judge's and the High Court—I presume my intimate connection with the case has prompted the appeal to me for something in the nature of an introduction.

The political history of a people is unfortunately often mirrored in the Courts of Justice. The reflection is, however, only partially faithful. Much that has led to criminal action is not disclosed, impulses are misunderstood or misinterpreted, and motives imputed through heat and passion which bear no connection with the true facts. The scope of a trial is necessarily limited and confined by the exigencies of procedure. The French, starting with the assumption that an accused person is guilty, rove by way of cross-examination over the whole of a man's life—they throw the burden of innocence upon the arraigned. The British principle, however, is that every accused person is innocent until he is proved guilty; we throw the burden of guilt upon the prosecution. The two procedures are antithetical—their methods are different—their aims antagonistic. To the English lawyer the foreign procedure is repellant—to foreigners British criminal ethics appear inefficient. It is the latter system which prevails in India, and it was under that system, with all its merits and its faults, that Barendra Kumar Ghose and his associates were tried.

The ringleader was a young man of unusual qualities. No lawyer can defend his action; no statesman applaud it. None the less Barendra Kumar Ghose was sincere and in a great measure chivalrous. Obsessed by conceptions of the injustice of the policy which severed his Motherland, he believed that the only influence which could force recognition of views which appeared to him to be patriotic was recourse to violence. Himself imbued with the passionate fervour of the genuine militant reformer, Barendra infected a large following of youthful adherents with his own unhappy enthusiasm. The gospel of the revolver and the bomb spread with alarming, if secret, success: a huge organisation developed throughout the country: inflammatory articles were openly disseminated by an able if disaffected press and the peace of the country was assuredly in peril. The Government had for long permitted revolutionary literature to pass unnoticed: the ferment grew under a misplaced sense of security till overt measures forced the authorities into action. Their intervention was swift and certain. Simultaneous raids on the 2nd May 1908 secured a large number who were the flower of the movement. Among them were the two brothers Arabindo and Barendra Kumar Ghose, and on the 18th May 1908 the case was put up before the committing Magistrate, Mr. Birley I. C. S. at Alipore. The accused reserved their cross-examination. After fifty-five witnesses had been examined the Magistrate, at the request of prosecuting counsel, committed the accused to Sessions, an undertaking being given that proofs of all additional witnesses to be called by the Government would be furnished to the defence before such witnesses were called. The undertaking was fulfilled and a great waste of time thereby obviated. In the committing Magistrate's Court Counsel for the Crown received his first letter threatening to blow him out of existence. When the Court rose I

went up to the Dock and asked Barendra if he approved this promise for my extermination. He courteously informed me that there was no personal objection to myself but that I was an obstruction to justice from the point of view of the accused and that much as he would regret my disappearance he could not forbid it. Then thrusting aside my insignificance,—for after all, as he reminded me, I was but ‘small fry’, a mere parasite—he ventured to predict that those behind the scenes would fly at higher game, a Commander-in-Chief and a Viceroy. I pointedly objected that Britons would no more consent to being intimidated than they would to being slaves, and that there was an indefinite number of noblemen to whom the position of a Viceroy and his emoluments would more than overcome the dread of assassination. Barendra assured me that the supply would in time prove insufficient to meet the demand. He spoke without heat, not as one directing murder but as a philosophic politician in mental touch and sympathy with the view of his countrymen. Long after, his sagacity was exemplified by the attack at Delhi on Lord Hardinge. The epistolary threats against me multiplied—they provided an infinite variety of death—unpleasant references were made to bombs, revolvers, and knives. My junior was so alarmed that he declined to drive to Court with me in my car and reached his end by circuitous approaches which daily changed their course. He has since died and I survive. In the Sessions Court my unknown enemies varied the sameness of their terror by sending me letters without stamps. I declined to pay for notices of my impending dissolution but my friend Shamsul Alum my right-hand police officer (who was subsequently shot in the corridors of the High Court when the Advocate General, Kenrick K. C., during my absence in England, was arguing the case on reference to Mr. Justice Harrington as to five accused upon whose

fate Sir Lawrence Jenkins and Mr. Justice Carnduff had disagreed) indignantly paid the postage himself and thereby accumulated a mass of instructive literature illustrated by diagrams.

In the Sessions Court the accused were placed behind a network of wire, police with fixed bayonets stood on guard throughout the room, and I had a five-chambered loaded revolver lying on my brief throughout the trial. The Government, regarding me, I presume, as a valuable investment in consequence of the fees they had paid me, insisted I should personally be guarded. Thereafter I was surrounded at my house and on my drives to Court by stalwart C.I.D. officers who struck one as being more dangerous with their loaded revolvers to myself than my prospective assailants.

However misguided Barendra was, he was obviously honest and chivalrous. His holograph confession sought to take the whole blame to himself and to exonerate his colleagues. He declined to apply, though a European British subject by the accident of his birth, for a trial by jury before the High Court, and though he declined to make any admissions, he instructed his Counsel R. C. Bonerjee not to deny the writing or signature to the famous "Sweets" letter on which his brother Arabindo was acquitted—by mistake.

The evidence was undoubtedly true and convincing. The police had done their share of detection with skill, with daring and with honesty. The incriminatory character of the documents was irrefutable, of the weapons and other things found, incontestable. Barendra Kumar Ghosh was, I still think rightly, convicted by Mr. Beachcroft, the Sessions Judge, of waging war against the King, and was awarded the death sentence. The Appellate Court reversed that finding, and holding that war had not been waged commuted the death sentence to imprisonment

for life. Under the late amnesty after the war Barendra and his colleagues have been released.

There were some remarkable incidents after and immediately before the arrest. Mrs. and Miss Kennedy were murdered by a bomb intended for Mr. Kingsford, I.C.S. at Mozufferpore. For these deaths Kuderam was hanged and his fellow helper committed suicide. The approver Narendranath Gossain was murdered in jail before he had completed his examination-in-chief in the Magistrate's Court by two of the accused under trial, both of whom were hanged. The prosecution consequently lost his evidence at sessions. Bannerjee, a police officer, was shot before he could be called as a witness, and his murderer was never discovered. The most dramatic was the murder of Babu Ashutosh Biswas the public prosecutor, my colleague, who one afternoon was conducting the prosecution during my absence from Court. He was shot in the back in the immediate vicinity of the Sessions Court by a young man who forfeited his life in return at the gallows.

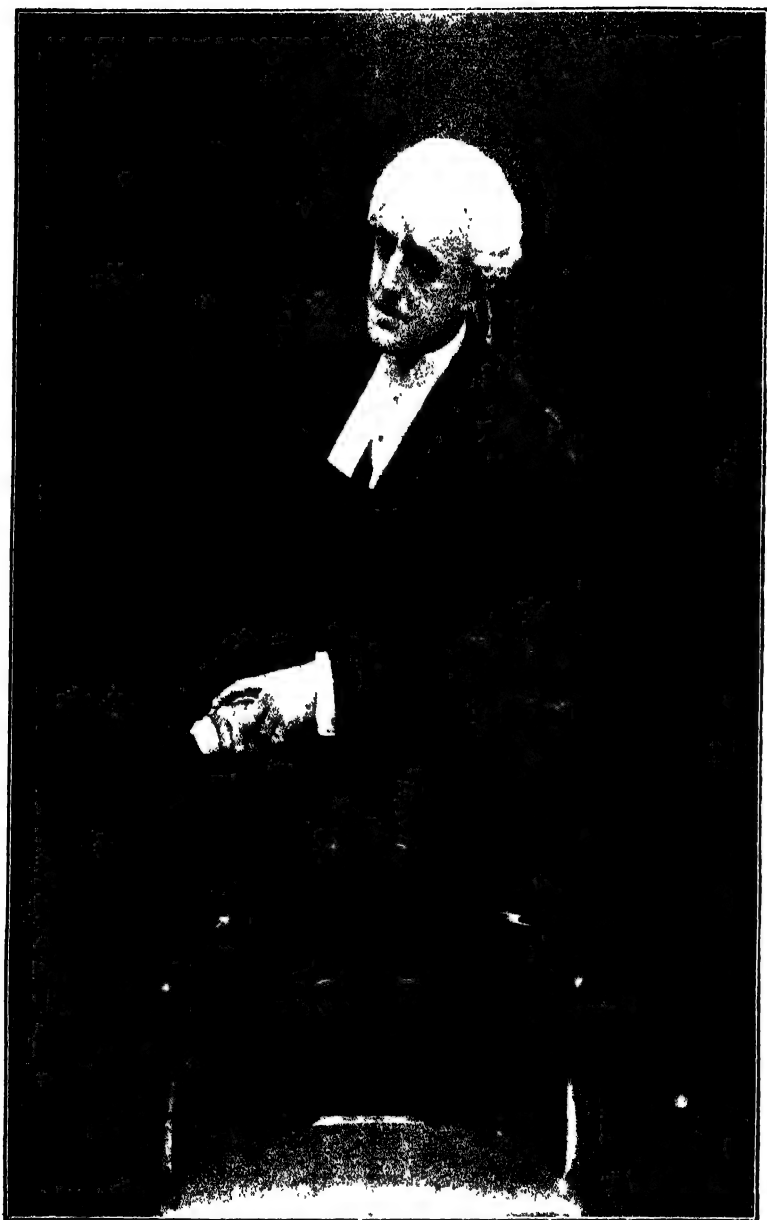
As I landed at Bombay in February 1912 from England I was told by the police of the murder in the corridor of the High Court at Calcutta of Shamshul Alam by a man who ran away, was caught, and subsequently hanged for the crime.

Arabindo Ghose had been a brilliant scholar in England. He had been Head of St. Paul's and won a scholarship at King's College Cambridge. There he was a contemporary of Mr. Beachcroft I.C.S., who tried him at Alipore and who had been Head of Rugby and had also won a scholarship at Cambridge. Both won honours at the University, and at the final examination for the Indian Civil Service Arabindo, the prisoner beat Beachcroft the Judge in—Greek!

No plea or apology or extenuation for the offence for which Barendra and his friends were convicted

can be offered, but I could not but regret the melancholy untowardness which accounted for the appearance in the dock of youths who, though offenders, had, in the main, offended from a spirit of mistaken patriotism. To me it appeared a matter for regret that a man of Arabindo's mental calibre should have been ejected from the Civil Service on the ground he could not, or would not, ride a horse. Capacity such as his would have been a valuable asset to the State. Had room been found for him in the Educational Service of India I believe he would have gone far not merely in personal advancement but in welding more firmly the links which bind his countrymen to ours. The new era of reform, in spite of local, and I believe temporary, cleavage, illumines India's political sky and promises a future as much a matter of just pride to the Englishman as of hope and contentment and advance to the Indian. Under such auspices a better and more trustful Liberalism let us hope, will infuse healthier political circulation into the country's system, and hereafter make impossible a return to the methods employed by those with whom these pages deal.

6, *Temple Chambers,*)
 Calcutta.) EARDLEY NORTON.



MR. HARTLEY, M.P.

A SHORT HISTORY OF THE CASE.

During the Viceroyalty of Lord Curzon 1899—1905 a most unpopular administrative measure was carried out known as the Partition of Bengal. It was effected in the teeth of the most strenuous opposition not only of the people of Bengal but also of the whole Indian people who sympathised with the Bengalis. They looked upon the measure as calculated to break the solidarity of the great Bengalee nation. All manner of constitutional agitation was resorted to to bring about its annulment, but to no effect. In despair the people resorted to *Swadeshi* agitation and declared Boycott of British goods on 7th August 1905 to draw the attention of the great English people to their legitimate grievances. The newly created Government of East Bengal and Assam as well as the Government of India during the administrations of Lord Curzon and his successor Lord Minto issued circulars and passed legislative measures and ordinances which would have the effect of suppressing the movement. Lawlessness followed repression and a very few of the more ardent spirits took to unconstitutional methods. The Criminal Intelligence Department (known as the C. I. D.) became very active and directed its attention to bringing several offending newspapers before Courts of law. During the whole of 1907 the vernacular Press of Bengal came in for a large measure of its attention and several prosecutions followed. The C. I. D. had information that there were secret societies which were holding the thread of discontent—but could get no definite information to spot them. In this state of things several overt acts followed which brought matters to a head. On the night of the 6th Dec. 1907 an attempt was made to blow up the train in which the Lieutenant-Governor of Bengal was at a place called Narayanganj in the District of Midnapur. Though some coolies working on the line were convicted yet the newspapers and other articles found near by made it very improbable that the work was done by coolies. The next incident was an attempt on the life of the Mayor of Chandernagore which took place on the night of 11th April, 1908. The Mayor had stopped a *Swadeshi* meeting from taking place. The Police as well as spies were then watching some persons in Calcutta and they had their suspicions. Matters were however brought to a head by an occurrence which

took place on 30th April 1908 at Mazafferpur. Mr. Kingsford was the District Judge there. He had in the previous year incurred the displeasure of the secret society by sending several newspaper men to jail while he was the Chief Presidency Magistrate in Calcutta and by ordering the whipping of a boy named Sushil Chandra Sen for a *fracas* with the Police. In attempting to kill Mr. Kingsford, Mrs. and Miss. Kennedy were murdered by a bomb thrown at their carriage, while they were coming out of the club, by a boy named Khudiram Bose. Acting on more definite information the Police obtained search warrants and on the early morning of 2nd May 1908 simultaneously searched several places in and about Calcutta. Principal of those places were :-

- (1) 32 Muraripukur Road, Maniktolla.
- (2) 48 Grey Street.
- (3) 33/4 Raja Navakrishen Street.
- (4) 15 Gopimohan Dutt's Lane.
- (5) 134 Harrison Road.

32 Muraripukur Road was a garden-house belonging to Aravinda Ghosh and his brothers. The property found here included rifles, guns, revolvers, a large quantity of ammunition, bombs, detonator, picric acid and other explosives, tools, zinc, copper, Revolutionary literature, etc. The persons arrested there were Barendra Kumar Ghosh, Ullaskar Dutt, Indubhason Rai, Bibhuti Bhanson Sarkar, Narendra Nath Buxi, Paresb Chandra Moulik, Kunjo Lal Sah, Bijoy Kumar Nag, Sachidra Kumar Sen, Purna Chandra Sen, Hamendra Nath Ghose, Nalinykanta Gupta, Sishir Kumar Ghose and Upendra Nath Banerjee, all educated young men belonging to respectable families. The search went on here for several days and hidden things were also dug out of earth.

At 48 Grey Street a large number of letters and documents, newspaper articles and cuttings were found. Aravinda Ghose was arrested upstairs and Abinash Chandra Bhattacharjee and Sailendra Nath Bose were arrested in the ground-floor.

At 38/4 Raja Navakrishen Street several bottles containing chemicals, tubes, etc. were found and Hem Chandra Das was arrested. At a search next day several instruments, file, chisel, nails, percussion cap and documents were found.

At 15 Gopi Mohan Dutt's Lane several documents were found and its inmates Nirapodo Roy and Kanai Lal Dutt were arrested.

At 134 Harrison Road several trunks and cane baskets were found. Their contents were false beard, loaded cartridges, dynamite cartridges, coils of fuse, coil of electric wire, earthen bomb moulds, copper bomb shells, pipe, brass cocks, fittings, an iron screw bomb with spikes, 2 bomb with detonating studs, bottles of picric acid, nitrate of potash, chemical glycerine, Ammonium chloride, 2 empty copper bomb cases, one brass shell

bomb, several manuscript plans, 3 live bombs and one partly made bomb, glass funnels and bulbs, liquid mercury, carbolic acid, large quantity of document etc. Its inmates, Asoke Chandra Nandy, Nagendra Nath Gupta, Dharani Nath Gupta, Bejoy Ratna Sen Gupta and Moti Lal Bose were arrested. Din Doyal Bose was arrested at Shambazar in the premises of the Tramway Company.

All these accused were produced before the Commissioner of Police and on the next day Mr. L. Birley, the District Magistrate of Alipur (24 Purgannas District) by a written order took up the case himself.

On the 12th May, another search was going on at Beniachong in the District of Sylhet. A large number of letters and documents, some explosive, a note book containing signs of cypher code and instruction for making dynamite and bomb, maps &c. were found. Three brothers named Birendra, Hem and Sushil Sen (the boy who was whipped by the orders of Mr. Kingsford) were arrested and sent down.

On the 4th May the house of Narendra Nath Gossain at Serampur was searched and he was arrested and on 10th May, Hrishikesh Kanjilal was arrested also at Serampur. Documents were found at both the places. On the 10th May, Sudhir Kumar Sircar was arrested at his father's house at Khulna.

On the 11th May, a house known as Boral's Koti in Deoghar was searched and several documents were found. On the 14th May at Sagordari in District Jessore one Birendra Nath Ghosh was arrested and brought down.

On the 12th May Krishnajibon Sanyal, a lad of 16, was arrested at his house at Kansat in District Malda and 39 copies of the newspaper *Jugantor* was found in his house. He was brought down to Calcutta.

On the 28th May (when the preliminary enquiry had already commenced) a house called Seal's Lodge in Jasidhi was searched and several documents were recovered.

Several of the accused persons made detailed confessions and statements which were recorded by Mr. Birley. When the latter took up the case the pleader for the defence (Babu Bejoy Krishna Bose) took objection to his going on with the inquiry as he had no jurisdiction to withdraw the case from the file of the C. P. Magistrate and he had recorded confessions after so taking cognisance and there was no complaint; the objections were overruled and Mr. Birley inquired into the case and examined 222 witnesses and committed the accused to the court of Sessions at Alipur on 19th August 1908.

In the meantime a second batch was being formed by the subsequent arrests that took place and the persons thus arrested

were—Debabrata Bose, Charu Chundra Roy, Indra Nath Nandy, Nikhileshwar Rai Moulik, Bijoy Chandra Bhattacharya, Provas Chandra Deb and Balkrishna Hari Kani (a Marhatti). 55 witnesses were examined in this case and they were committed to the Court of Sessions on 14th Sep. to take their trial along with those previously committed.

The trial of both the batches commenced before Mr. C. P. Benchcroft, I. C. S., Additional Sessions Judge, Alipur on 19th October 1908. Various objections were taken to the form of the charges, the joint trial, admissibility of evidence and other matters. Charu Chandra Roy who was a French subject brought from Chadrannagore on an extradition warrant was ordered to be discharged on 5th November as Government withdrew from his prosecution. Kanai Lal Dutt was in the meantime sentenced to be hanged before this trial began for murdering the approver Narendra Nath Gossain in the Alipur Jail compound on 31st August 1908.

Altogether 206 witnesses were examined and cross-examined at length and then both sides argued the case at great length. The court was thus engaged till the 13th April 1909. On the 14th April the opinion of the Assessors were taken and judgment was delivered on the 6th May 1909.

Accused Barindra Kumar Ghose and Ullaskar Dutt were sentenced to be hanged under sections 121, 121A, and 122 I.P.C. Accused Hem Chandra Das, Upendra Nath Banerjee, Bibhuti Bhusan Sarkar, Hrishikesh Kanjilal, Birendra Chandra Sen, Sudhir Kumar Ghose, Indra Nath Nundy, Abinash Ch. Bhattacharyya, Sailendra Nath Bose and Indra Bhusan Roy were sentenced to be transported for life under Sections 121A and 122. Poresli Ch. Moulik, Sishir Kumar Ghose, Nirapado Ray were sentenced to transportation for 10 years under sections 121 and 122. The properties of all these accused were also forfeited to Government. Asoke Chandra Nandy, Balkrishna Hari Kane, Sushil Kumar Sen were sentenced to transportation for 7 years. Krishna Jibon Sanyal was sentenced to one year's rigorous imprisonment. The rest of the accused, viz. Naliny K. Sen Gupta, Sachindra K. Sen, Kunjo Lal Shaha, Bejoy Kumar Nag, Narendra Nath Bukshi, Purna Ch. Sen, Hemendra Nath Ghosh, Aravinda Ghose, Dindayal Bose, Birendra Nath Ghose, Dharani Nath Gupta, Nagendra Nath Gupta, Hem Chandra Sen, Debabrata Bose, Nikhileshwar Roy Moulik, Bijoy Ch. Bhattacharya and Provas Chandra Dev were acquitted.

Thus the enquiry before Mr. Birley occupied 76 days and the trial in the Court of Sessions took 131 days. It will be seen hereafter that the appeal in the High Court was heard during 47 days and the reference by a Third Judge for 20 days. The mass of documents filed if counted individually were over

four thousands and the material articles exhibited, i.e., bombs, tools, revolvers etc. were between three to four hundred.

A word may be said here with reference to the marking of the Exhibits and their numbers. Those found at 32 Muraripuker Road on 2nd May were marked Ex. 1-232, 387-465 and 1128. The place was searched again on the 6th, 7th and 8th May and things found were marked Ex. 233-282.

Things found at 15 Gopee Mohan Dutt's lane were exhibited as 373-386 and 710-716. Those found at 48 Grey Street were marked as Ex. 283-319, 1208 and 1209; those found at 38-4 Raja Navakrishen Street were Ex. 320-329 and articles 717-734. This place was again searched the next day and Ex. 330-372 and 1132-1134 were recovered. Things found at Harrison Road were Ex. 572-709, 739 and 740. (See List of Exhibits).

On the 2nd May the following things were also found at the following places on search :—(1) At 30½ Harrison Road Ex. 760-764 and 1262 and 1263. The prosecution case was that this place was a sort of receiving post office for the conspirators. (2) 4 Harrison Road, a shop called *Jugantar Pustokaloy*, was searched, but nothing found, as the case was that shop had been removed 2 or 3 days before the 2nd May. (3) 23 Scott's lane, where Aravinda Ghose lived up to 28th April when he removed to 48 Grey Street. Nothing was found. (4) Shibpur Engineering College, the quarters of Babu Durga Das Dutt, Professor there and father of Ullashkar was also searched but nothing was found.

A search took place at 4 Raja's Lane where one Tara Nath Roy Chowdhury used to live. Some letters Ex. 1071-1081 and a box of arms and ammunition Ex. 1447 were found there. Things found at Seal's Lodge were marked 767-777 and 1127.

The two accused sentenced to be hanged filed their appeal before the High Court on the 13th May 1909 and the rest also did the same subsequently. On the 9th August the Chief Justice, Sir L. H. Jenkins, Kt. and Mr. Justice Carnduff began hearing the appeal and the arguments lasted till the 12th October. Their Lordships delivered separate judgments. They agreed in acquitting B. H. Kane. With regard to 12 others they upheld their convictions under sections 121-A only viz. Barindra, Ullaskar, Upendra, Hem Das, Indra Rai, Sishir, Poresb, Bibhuti, Nirapada, Abinash, Sudhir and Hrishikesh—but the sentences were reduced. Regarding 5 others, Sailendra, Krishna Jiban, Biren Sen, Sushil Sen and Indra Nundy the Chief Justice was for acquittal, but Mr. Justice Carnduff for upholding their convictions under section 121A. A reference therefore had to be made to Justice Sir Richard Harrington who heard the case for 20 days from 3rd January 1910 and in the end agreeing with the Chief Justice he acquitted Krishna

Jibon, Sushil and Indra Nundy but upheld the convictions of Birendra Sen and Sailendra Bose.

While fully realising that a History of the Trial is not complete unless at least most of the important documents upon which the Crown relied are printed in this volume, the author refrained from doing so for very good reasons. Public policy, future peace and safety of the country alike demand that the Notes on Drill, the formulæ for making bombs and explosives, outlines of military attacks and bayonet charges and many other allied subjects which were noted down with skilful and masterly hands and found at the various places of the conspiracy should not go before the public—though as a historical study they might be instructive to the few. For the same reason it was thought not expedient to reprint all the venomous articles appearing in the *Jugantar* and *Sandhya* newspapers and to inflame the minds of the impressionable youths over again with them. As the most important figure among the accused was Arabinda Ghose, one who by his talents and by his high education from a long residence of 14 years in England and by his position in the country, was looked upon as a prominent leader of the Nationalist movement, though he was acquitted by the Trial Judge, a brief synopsis of the remarkable address by his counsel Mr C. R. Das is given in this book for study as a piece of instructive and interesting literature. Full arguments dealing with the most intricate points of law and facts both by the Crown Counsel and those engaged by the defence, before the appeal Bench in the High Court are given for close study by all students of Constitutional History.

BEJOY KRISHNA BOSE,
Vakil.

LEADING DATES.

- 1903.—Sir Herbert Risley's Resolution about the proposed Partition of Bengal.
- 1904-5.—Great agitation against the partition and public meetings throughout the Province.
- 1904.—Newspaper "New India" started by Babu Bepin Chandra Pal.
- 7-8-05.—Boycott of British goods declared at the Calcutta Town Hall meeting.
- 16-10-05.—Bengal was partitioned, and new Province East-Bengal and Assam created.
- 20-11-05.—First declaration of "*Sandhya*" newspaper by Brahmabandav Upadhyaya as Printer and Publisher at 193 Cornwallis Street.

Feb. 1906.—Agricultural Conference at Midnapur ; Khudiram Bose arrested for circulating "*Bande Mataram*" pamphlets.

12-3-06.—First declaration of "*Jugantar*" newspaper by Bhupendra Nath Dutt as printer.

Apl. 1906.—Sedition Case against Khudiram Bose.

6-8-06.—First declaration of "*Bande Mataram*" newspaper by Kshettra Mohan Singh as printer.

Aug. 06.—*Chatra Vandar* started.

Sep. 06.—Hem Chandra Das left for France.

22-10-06.—Declaration by Amar Mukherjee as printer of *Bande Mataram* at 2/1 Creek Row.

5-11-06.—Declaration by Bhupendra as printer of "*Jugantar*" at 41 Champatala First Lane.

9-11-06.—Declaration for "*Bande-Mataram*" Press.

4-3-07.—Mr. Higginbotham shot at Kustia.

27-4-07.—Hindu-Mahomedan riot at Jamalpur mela (Mymensingh).

20-5-07.—Declaration by Monmohan Ghosh as printer of "*Navasakti*" newspaper at 48 Grey Street.

July '07.—Pamphlets "*Ramony*" and "*Mukti kow Pathey*" published.

Do. ——"Indian Sociologist" and "*Gaelic American*" were interdicted under the Sea Customs Act.

15-7-07.—Declaration of "*Sandhya*" at 23 Shibnarain Das' Lane.

24-7-07.—Conviction under Section 124/A of Bhupendra Dutt who was sentenced to one year.

Aug. '07.—Prosecution of B. Upadhaya, Haricharan Das and Saroda Sen. Upadhaya died and other two tendered apology.

27-8-07.—Sushil Sen sentenced to 15 stripes for assaulting S. I. Huey.

2^o-9-07.—Conviction of Basanta Bhattacharya, Printer of *Jugantar*,—imprisonment to two years.

23-9-07.—Conviction of Apurba Bose, printer of "*Bande-Mataram*"—to 3 months. Arabinda Ghose was acquitted.

Nov. '07.—Two attempts to wreck Lieutenant-Governor's trains between Chandernagore and Mankunda.

6-12-07.—L.G.'s train wrecked at Naraingarh.

26-12-07.—Indian National Congress held at Surat.

16-1-08.—Conviction of Baikunta Acharya, printer of *Jugantar*,
—to 2 years.

19-2-08.—Conviction of Manabendra Chatterjea, printer of *Sandhya*.

Do. —Conviction of Manmohan Ghose of *Navasakti*—to 6 months.

4-4-08.—Swadeshi meeting stopped by Mayor of Chandernagore.

11-4-08.—Bomb thrown at the Mayor's house at Chandernagore.

30-4-08.—Muzzaffarpur outrage. Mrs. and Miss Kennedy killed.

2-5-08.—Profulla Chaki committed suicide at Waini Railway Station.

2-5-08.—Searches and arrests at 32 Muraripukur Road, 48 Grey Street, 34/1 Raja Navakrishen Street, 15 Gopi Mohan Datt's Lane, 134 Harrison Road, 23 Scott's Lane, 4/1 Harrison Road, 30/2 Harrison Road.

3-5-08.—Search and arrest of Dindoyal Bose, 80 College Street.

Do. Search of the house of Satteyendra Nath Bose at Midnapur.

4-5-08.—Confessions of Barindra Ghose, Ullaskar Dutt, Indra Bhuson Roy, Upendra Nath Banerjea, recorded by Mr. Birley.

5-5-08.—Search and arrest of Narendra Gossain, the approver, at Srirampur.

Do. —Explosion at Indra Nath Nundy's house, 37 College Street.

Do. —Confession of Narendra Nath Bakshi.

6-5-08.—Search of the house of Suresh and Satish Ganguly at Chandpur.

Do. Second search at 32 Muraripukur Road.

7-5-08.—Third do do do.

8-5-08.—Fourth do do do.

Do. Search of the house of Subodh Chandra Mullick at Benares.

10-5-08.—Search of the house of Hrishikesh Kanjilal Chatra, Srirampur.

10-5-08.—Search of the house of Sudhir Kumar Sarkar at Khulna.

11-5-08.—Confession of Sudhir Kumar Sirkar.

11-5-08.—Confession of Hrishikesh Kanjilal.

A SHORT HISTORY OF THE CASE.

During the Viceroyalty of Lord Curzon 1899—1905 a most unpopular administrative measure was carried out known as the Partition of Bengal. It was effected in the teeth of the most strenuous opposition not only of the people of Bengal but also of the whole Indian people who sympathised with the Bengalis. They looked upon the measure as calculated to break the solidarity of the great Bengalee nation. All manner of constitutional agitation was resorted to to bring about its annulment, but to no effect. In despair the people resorted to *Swadeshi* agitation and declared Boycott of British goods on 7th August 1905 to draw the attention of the great English people to their legitimate grievances. The newly created Government of East Bengal and Assam as well as the Government of India during the administrations of Lord Curzon and his successor Lord Minto issued circulars and passed legislative measures and ordinances which would have the effect of suppressing the movement. Lawlessness followed repression and a very few of the more ardent spirits took to unconstitutional methods. The Criminal Intelligence Department (known as the C. I. D.) became very active and directed its attention to bringing several offending newspapers before Courts of Law. During the whole of 1907 the vernacular Press of Bengal came in for a large measure of its attention and several prosecutions followed. The C. I. D. had information that there were secret societies which were holding the thread of discontent—but could get no definite information to spot them. In this state of things several overt acts followed which brought matters to a head. On the night of the 6th Dec. 1907 an attempt was made to blow up the train in which the Lieutenant-Governor of Bengal was at a place called Narayanganj in the District of Midnapur. Though some coolies working on the line were convicted yet the newspapers and other articles found near by made it very improbable that the work was done by coolies. The next incident was an attempt on the life of the Mayor of Chandernagore which took place on the night of 11th April, 1908. The Mayor had stopped a *Swadeshi* meeting from taking place. The Police as well as spies were then watching some persons in Calcutta and they had their suspicions. Matters were however brought to a head by an occurrence which

took place on 30th April 1908 at Mazafferpur. Mr. Kingsford was the District Judge there. He had in the previous year incurred the displeasure of the secret society by sending several newspaper men to jail while he was the Chief Presidency Magistrate in Calcutta and by ordering the whipping of a boy named Sushil Chandra Sen for a *fracas* with the Police. In attempting to kill Mr. Kingsford, Mrs. and Miss. Kennedy were murdered by a bomb thrown at their carriage, while they were coming out of the club, by a boy named Khudiram Bose. Acting on more definite information the Police obtained search warrants and on the early morning of 2nd May 1908 simultaneously searched several places in and about Calcutta. Principal of those places were :—

- (1) 32 Muraripukur Road, Maniktolla.
- (2) 48 Grey Street.
- (3) 33/4 Raja Navakrishen Street.
- (4) 15 Gopimohan Dutt's Lane.
- (5) 134 Harrison Road.

32 Muraripukur Road was a garden-house belonging to Aravinda Ghosh and his brothers. The property found here included rifles, guns, revolvers, a large quantity of ammunition, bombs, detonator, picric acid and other explosives, tools, zinc, copper, Revolutionary literature, etc. The persons arrested there were Barendra Kumar Ghosh, Ullaskar Dutt, Indubhuson Rai, Bibhuti Bhushon Sarkar, Narendra Nath Buxi, Paresch Chandra Moulik, Kunjo Lal Sah, Bijoy Kumar Nag, Suchidra Kumar Sen, Purna Chandra Sen, Hamendra Nath Ghose, Nalinykanta Gupta, Sishir Kumar Ghose and Upendra Nath Banerjee, all educated young men belonging to respectable families. The search went on here for several days and hidden things were also dug out of earth.

At 48 Grey Street a large number of letters and documents, newspaper articles and cuttings were found. Aravinda Ghose was arrested upstairs and Abinash Chandra Bhattacharjee and Sailendra Nath Bose were arrested in the ground-floor.

At 38/4 Raja Navakrishen Street several bottles containing chemicals, tubes, etc. were found and Hem Chandra Das was arrested. At a search next day several instruments, file, chisel, nails, percussion cap and documents were found.

At 15 Gopi Mohan Dutt's Lane several documents were found and its inmates Nirapodo Roy and Kanai Lal Dutt were arrested.

At 134 Harrison Road several trunks and cane baskets were found. Their contents were false beard, loaded cartridges, dynamite cartridges, coils of fuse, coil of electric wire, earthen bomb moulds, copper bomb shells, pipe, brass cocks, fittings, an iron screw bomb with spikes, 2 bomb with detonating studs, bottles of picric acid, nitrate of potash, chemical glycerine, Ammonium chloride, 2 empty copper bomb cases, one brass shell

bomb, several manuscript plans, 3 live bombs and one partly made bomb, glass funnels and bulbs, liquid mercury, carbolic acid, large quantity of document etc. Its inmates, Asoke Chandra Nandy, Nagendra Nath Gupta, Dharani Nath Gupta, Bejoy Ratna Sen Gupta and Moti Lal Bose were arrested. Din Doyal Bose was arrested at Shambazar in the premises of the Tramway Company.

All these accused were produced before the Commissioner of Police and on the next day Mr. L. Birley, the District Magistrate of Alipur (24 Pargannas District) by a written order took up the case himself.

On the 12th May, another search was going on at Beniachong in the District of Sylhet. A large number of letters and documents, some explosive, a note book containing signs of cypher code and instruction for making dynamite and bomb, maps &c. were found. Three brothers named Birendra, Hem and Sushil Sen (the boy who was whipped by the orders of Mr. Kingsford) were arrested and sent down.

On the 4th May the house of Narendra Nath Gossain at Serampur was searched and he was arrested and on 10th May, Hrishikesh Kanjilal was arrested also at Serampur. Documents were found at both the places. On the 10th May, Sudhir Kumar Sircar was arrested at his father's house at Khulua.

On the 11th May, a house known as Boral's Koti in Deoghar was searched and several documents were found. On the 14th May at Sagordari in District Jessore one Birendra Nath Ghosh was arrested and brought down.

On the 12th May Krishnajibon Sanyal, a lad of 16, was arrested at his house at Kansat in District Malda and 39 copies of the newspaper *Jugantar* was found in his house. He was brought down to Calcutta.

On the 28th May (when the preliminary enquiry had already commenced) a house called Seal's Lodge in Jasidhi was searched and several documents were recovered.

Several of the accused persons made detailed confessions and statements which were recorded by Mr. Birley. When the latter took up the case the pleader for the defence (Babu Bejoy Krishna Bose) took objection to his going on with the inquiry as he had no jurisdiction to withdraw the case from the file of the C. P. Magistrate and he had recorded confessions after so taking cognisance and there was no complaint; the objections were overruled and Mr. Birley inquired into the case and examined 222 witnesses and committed the accused to the court of Sessions at Alipur on 19th August 1908.

In the meantime a second batch was being formed by the subsequent arrests that took place and the persons thus arrested

were—Debabrata Bose, Charu Chundra Roy, Indra Nath Nandy, Nikhileshwar Rai Moulik, Bijoy Chandra Bhattacharya, Provas Chandra Deb and Balkrishna Hari Kani (a Marhatti). 55 witnesses were examined in this case and they were committed to the Court of Sessions on 14th Sep. to take their trial along with those previously committed.

The trial of both the batches commenced before Mr. C. P. Beachcroft, I. C. S., Additional Sessions Judge, Alipur on 19th October 1908. Various objections were taken to the form of the charges, the joint trial, admissibility of evidence and other matters. Charu Chandra Roy who was a French subject brought from Chadranaogore on an extradition warrant was ordered to be discharged on 5th November as Government withdrew from his prosecution. Kanai Lal Dutt was in the meantime sentenced to be hanged before this trial began for murdering the approver Narendra Nath Gossain in the Alipur Jail compound on 31st August 1908.

Altogether 206 witnesses were examined and cross-examined at length and then both sides argued the case at great length. The court was thus engaged till the 13th April 1909. On the 14th April the opinion of the Assessors were taken and judgment was delivered on the 6th May 1909.

Accused Barindra Kumar Ghose and Ullaskar Dutt were sentenced to be hanged under sections 121, 121A and 122 I.P.C. Accused Hem Chandra Das, Upendra Nath Banerjee, Bibhut Bhushan Sarkar, Hrishikesh Kanjilal, Birendra Chandra Sen, Sudhir Kumar Ghose, Indra Nath Nandy, Abinash Ch. Bhattacharya, Sailendra Nath Bose and Indra Bhushan Roy were sentenced to be transported for life under Sections 121A and 122. Poresch Ch. Moulik, Sishir Kumar Ghose, Nirapada Ray were sentenced to transportation for 10 years under sections 121 and 122. The properties of all these accused were also forfeited to Government. Asoke Chandra Nandy, Balkrishna Hari Kani, Sushil Kumar Sen were sentenced to transportation for 7 years. Krishna Jibou Sanyal was sentenced to one year's rigorous imprisonment. The rest of the accused, viz. Naliny K. Sen Gupta, Sachindra K. Sen, Kunjo Lal Shaha, Bejoy Kumar Nag, Narendra Nath Bakshi, Purua Ch. Sen, Hemendra Nath Ghosh, Aravinda Ghose, Dindayal Bose, Birendra Nath Ghose, Dharani Nath Gupta, Nagendra Nath Gupta, Hem Chandra Sen, Debabrata Bose, Nikhileshwar Roy Moulik, Bijoy Ch. Bhattacharya and Provas Chandra Dev were acquitted.

Thus the enquiry before Mr. Birley occupied 76 days and the trial in the Court of Sessions took 131 days. It will be seen hereafter that the appeal in the High Court was heard during 47 days and the reference by a Third Judge for 20 days. The mass of documents filed if counted individually were over

four thousands and the material articles exhibited, i.e., bombs, tools, revolvers etc. were between three to four hundred.

A word may be said here with reference to the marking of the Exhibits and their numbers. Those found at 32 Muraripuker Road on 2nd May were marked Ex. 1-232, 387-465 and 1128. The place was searched again on the 6th, 7th and 8th May and things found were marked Ex. 233-282.

Things found at 15 Gopee Mohan Dutt's lane were exhibited as 373-386 and 710-716. Those found at 48 Grey Street were marked as Ex. 283-319, 1208 and 1209: those found at 38-4 Raja Navakrishen Street were Ex. 320-329 and articles 717-734. This place was again searched the next day and Ex. 330-372 and 1132-1134 were recovered. Things found at Harrison Road were Ex. 572-709, 739 and 740. (See List of Exhibits).

On the 2nd May the following things were also found at the following places on search :—(1) At 30/2 Harrison Road Ex. 760-764 and 1262 and 1263. The prosecution case was that this place was a sort of receiving post office for the conspirators. (2) 4 Harrison Road, a shop called *Jugantar Pustakaloy*, was searched, but nothing found, as the case was that shop had been removed 2 or 3 days before the 2nd May. (3) 23 Scott's lane, where Aravinda (Ghose lived up to 28th April when he removed to 48 Grey Street. Nothing was found. (4) Shibpur Engineering College, the quarters of Babu Durga Das Dutt, Professor there and father of Ullashkar was also searched but nothing was found.

A search took place at 4 Raja's Lane where one Tara Nath Roy Chowdhury used to live. Some letters Ex. 1071-1081 and a box of arms and ammunition Ex. 1447 were found there. Things found at Seal's lodge were marked 767-777 and 1127.

The two accused sentenced to be hanged filed their appeal before the High Court on the 13th May 1909 and the rest also did the same subsequently. On the 9th August the Chief Justice, Sir L. H. Jenkins, Kt. and Mr. Justice Curduff began hearing the appeal and the arguments lasted till the 12th October. Their Lordships delivered separate judgments. They agreed in acquitting B. H. Kane. With regard to 12 others they upheld their convictions under sections 121-A only viz. Barindra, Ullashkar, Upendra, Hem Das, Indra Rai, Sishir, Poresb, Bibhuti, Nirapada, Abinash, Sudhir and Hrishikesh—but the sentences were reduced. Regarding 5 others, Sailendra, Krishna Jiban, Biren Sen, Sushil Sen and Indra Nundy the Chief Justice was for acquittal, but Mr. Justice Curduff for upholding their convictions under section 121A. A reference therefore had to be made to Justice Sir Richard Harrington who heard the case for 20 days from 3rd January 1910 and in the end agreeing with the Chief Justice he acquitted Krishna

Jibon, Sushil and Indra Nundy but upheld the convictions of Birendra Sen and Sailendra Bose.

While fully realising that a History of the Trial is not complete unless at least most of the important documents upon which the Crown relied are printed in this volume, the author refrained from doing so for very good reasons. Public policy, future peace and safety of the country alike demand that the Notes on Drill, the formulæ for making bombs and explosives, outlines of military attacks and bayonet charges and many other allied subjects which were noted down with skilful and masterly hands and found at the various places of the conspiracy should not go before the public—though as a historical study they might be instructive to the few. For the same reason it was thought not expedient to reprint all the venomous articles appearing in the *Jugantar* and *Sandhya* newspapers and to inflame the minds of the impressionable youths over again with them. As the most important figure among the accused was Arabinda Ghose, one who by his talents and by his high education from a long residence of 14 years in England and by his position in the country, was looked upon as a prominent leader of the Nationalist movement, though he was acquitted by the Trial Judge, a brief synopsis of the remarkable address by his counsel Mr C. R. Das is given in this book for study as a piece of instructive and interesting literature. Full arguments dealing with the most intricate points of law and facts both by the Crown Counsel and those engaged by the defence, before the appeal Bench in the High Court are given for close study by all students of Constitutional History.

BEJOY KRISHNA BOSE,
Vakil.

LEADING DATES.

- 1903.—Sir Herbert Risley's Resolution about the proposed Partition of Bengal.
- 1904-5.—Great agitation against the partition and public meetings throughout the Province.
- 1904.—Newspaper "New India" started by Babu Bepin Chandra Pal.
- 7-8-05.—Boycott of British goods declared at the Calcutta Town Hall meeting.
- 16-10-05.—Bengal was partitioned, and new Province East-Bengal and Assam created.
- 20-11-05.—First declaration of "*Sandhya*" newspaper by Brahmandav Upadhyaya as Printer and Publisher at 193 Cornwallis Street.

Feb. 1906.—Agricultural Conference at Midnapur; Khudiram Bose arrested for circulating "*Bande Mataram*" pamphlets.

12-3-06.—First declaration of "*Jugantar*" newspaper by Bhupendra Nath Dutt as printer.

Apl. 1906.—Sedition Case against Khudiram Bose.

6-8-06.—First declaration of "*Bande Mataram*" newspaper by Kshettra Mohan Singh as printer.

Aug. 06.—*Chatra Vandar* started.

Sep. 06.—Hem Chandra Das left for France.

22-10-06.—Declaration by Amar Mukherjea as printer of *Bande-Mataram* at 2/1 Creek Row.

5-11-06.—Declaration by Bhupendra as printer of "*Jugantar*" at 41 Champatala First Lane.

9-11-06.—Declaration for "*Bande-Mataram*" Press.

4-3-07.—Mr. Higginbotham shot at Kustia.

27-4-07.—Hindu-Mahomedan riot at Jamalpur mela (Mymensingh).

20-5-07.—Declaration by Monmohan Ghosh as printer of "*Navasakti*" newspaper at 48 Grey Street.

July '07.—Pamphlets "*Ranunity*" and "*Mukti kow Pathay*" published.

Do. — "*Indian Sociologist*" and "*Gaelic American*" were interdicted under the Sea Customs Act.

15-7-07.—Declaration of "*Sandhya*" at 23 Shibnarain Das' Lane.

24-7-07.—Conviction under Section 124/A of Bhupendra Dutt who was sentenced to one year.

Aug. '07.—Prosecution of B. Upadhaya, Haricharan Das and Saroda Sen. Upadhaya died and other two tendered apology.

27-8-07.—Sushil Sen sentenced to 15 stripes for assaulting S. I. Huey.

2-9-07.—Conviction of Basanta Bhattacharya, Printer of *Jugantar*,—imprisonment to two years.

23-9-07.—Conviction of Apurba Bose, printer of "*Bande-Mataram*"—to 3 months. Arabinda Ghose was acquitted.

Nov. '07.—Two attempts to wreck Lieutenant-Governor's trains between Chandernagore and Mankunda.

6-12-07.—L.-G's train wrecked at Naraingarh.

26-12-07.—Indian National Congress held at Surat.

ALIPORE BOMB CASE TRIAL.

16-1-08.—Conviction of Baikunta Acharya, printer of *Jugantar*,
—to 2 years.

19-2-08.—Conviction of Manabendra Chatterjea, printer of *Sandhya*.

Do. —Conviction of Manmohan Ghose of *Navasakti*—to 6 months.

4-4-08.—Swadeshi meeting stopped by Mayor of Chandernagore.

11-4-08.—Bomb thrown at the Mayor's house at Chandernagore.

30-4-08.—Muzzaffarpur outrage. Mrs. and Miss Kennedy killed.

2-5-08.—Profulla Chaki committed suicide at Waini Railway Station.

2-5-08.—Searches and arrests at 32 Muraripukur Road, 48 Grey Street, 34/1 Raja Navakrishen Street, 15 Gopi Mohan Datt's Lane, 134 Harrison Road, 23 Scott's Lane, 4/1 Harrison Road, 30/2 Harrison Road.

3-5-08.—Search and arrest of Dindoyal Bose, 80 College Street.

Do. Search of the house of Sattayendra Nath Bose at Midnapur.

4-5-08.—Confessions of Barindra Ghose, Ullaskar Dutt, Indra Bhuson Roy, Upendra Nath Banerjea, recorded by Mr. Birley.

5-5-08.—Search and arrest of Narendra Gossain, the approver, at Srirampur.

Do. —Explosion at Indra Nath Nundy's house, 37 College Street.

Do. —Confession of Narendra Nath Bakshi.

6-5-08.—Search of the house of Suresh and Satish Ganguly at Chandpur.

Do. —Second search at 32 Muraripukur Road.

7-5-08.—Third do do do.

8-5-08.—Fourth do do do.

Do. —Search of the house of Subodh Chandra Müllick at Benares.

10-5-08.—Search of the house of Hrishikesh Kanjilal, Chatra, Srirampur.

10-5-08.—Search of the house of Sudhir Kumar Sarkar at Khulna.

11-5-08.—Confession of Sudhir Kumar Sirkar.

11-5-08.—Confession of Hrishikesh Kanjilal.

- 11-5-08.—Search of the house of Hemendra Nath Ghosh, Sagordari, Jessore.
- 12-5-08.—Search of the house of Krishna Jibon Sanyal at Kansat, Malda.
- 15-5-08.—Search of the house of Kailesh Sen, Beniachong, Sylhet.
- 15-5-08.—Confession of Birendra Nath Ghose.
- 16-5-08.—Confession of Krishna Jibon Sanyal.
- 17-5-08.—First Information of the case put in before Mr. Birley.
- 18-5-08.—Preliminary Enquiry began before Mr. Birley, District Magistrate of Alipur.
- 19-5-08.—Petition of complaint of the case filed.
- 19-5-08.—Search of No. 4 Raja's Lane.
- 23-5-08.— do. Bejoy Nag's house at Khulna.
- 23-5-08.— do. Indu Bhusan Sen's house at Srifaltola.
- 26-5-08.— do. Kunjolal Saha's house at Kustia.
- 28-5-08.— do. Seal's Lodge, Rohiny, Baidyanath junction.
- 2-6-08.— do. Purna Chandra Sen's house, Tamluq.
- 8-6-08.— do. Debabrata Bose's house, 55/3 Grey Street.
- 23-6-08.— do. Surendra Mukerjee's house at Bankura.
- 23-6-08.— do. Indra Nundy house, 37 College Street.
- 1-7-08.} — do. Bejoy Bhattacharya's house, 10/1 Rani San-
- 2-7-08.} kary Lane.
- 3-7-08.— do. Nikhileswar Roy Moulik's house, Dhamrai, Dacca.
- 19-8-08.—Commitment of the first batch to Court of Sessions by Mr. Birley.
- 31-8-08.—Murder of the approver Narendra Nath Gossain by Kanai Lal Dutt in the Presidency Jail.
- 14-9-08.—Commitment of the second batch to Court of Sessions by Mr. Birley.
- 19-10-08.—Trial began before Mr. C. P. Beachcroft, the Additional Sessions Judge, Alipur.
- 10-2-09.—Public Prosecutor of Alipur, Babu Ashutosh Biswas shot down dead.
- 6-8-09.—Judgment of Sessions Court delivered.
- 9-8-09.—Hearing of Appeal in the High Court began.
- 23-11-09.—Judgment of the Appellate Court delivered.
- 2-1-10.—Hearing of reference commenced before Mr. Justice Harrington.
- 20-1-10.—Murder of Inspector Huq in the High Court corridor.

THE PRELIMINARY ENQUIRY.



The following First Information Report was filed by Inspector P. C. Biswas before Mr. L. Birley, District Magistrate on the 19th May 1908 :—

FIRST INFORMATION REPORT.

In course of the investigation of the Narayangarh train wrecking case, Midnapur, which occurred on the morning of the 6th

First Information. December last, a clue was obtained of the existence of a secret society working with its head quarters at various places in Calcutta. The information thus received was followed up and a number of officers detailed to watch its operations in plain clothes. The following are some of the important places where its members used to conspire together against the lives of the rulers of the country with a view to overawe the Imperial and the Provincial Governments in India by means of criminal force or show of criminal force to secure independence of their country.

1. 32 Muraripukur Road (Garden house) which is the joint property of Arabinda Ghose, Barindra Ghose and their two brothers Monomohan Ghose and Benoy Ghose.

2. 23 Scott's Lane where Arabinda Ghose, Barindra Ghose and their friends Abinash Chandra Bhattacharji and Sailendra Bose used to mess together.

3. 38-4 Raja Nava Kissen Street where explosives were prepared by accused Hem Chandra Das.

4. 15 Gopi Mohan Dutt's Lane where some of the explosives were stored and manufactured by the members of this society.

5. 4 Harrison Road where the "Yugantar" book shop has been started.

6. 30-2 Harrison Road where the members of this society used to congregate from time to time in view of carrying on correspondence with its other members working or employed at other places.

7. 134 Harrison Road where some of the explosives and ammunitions were stored.

8. "Navasakti" Office, 48 Grey Street, where Arabinda Ghose, his brother Barindra Ghose and their friends Abinash Chandra Bhattacharjee and Sailendra Bose removed to on the 30th April last.

On the 1st instant information was received of the bomb outrage at Mozafferpur necessitating immediate action and warrants were taken out for simultaneous house searches in Calcutta.

On the 2nd instant at 5 A. M. the searches commenced at different centres and arrests were made with the results noted below :—

1. At the Muraripukur Road garden centre 18 persons were arrested. Their names are :—

- 1 Barindra Kumar Ghose
- 2 Indu Bhusan Rai of Khulna
- 3 Ullaskar Dutt of Tippera
- 4 Upendra Nath Banerjee of Chandernagore
- 5 Shisir Kumar Ghose of Jessore
- 6 Nalini Kumar Gupta of Faridpur
- 7 Sachindra Kumar Sen of Dacca
- 8 Poresli Chandra Maulik of Jessore
- 9 Kunja Lal Shaha of Nadia
- 10 Bejoy Kumar Nag of Khulna
- 11 Norendra Nath Bakshi of Rajshahi
- 12 Purna Chandra Sen of Midnapur
- 13 Hemendra Nath Ghosh of Jessore
- 14 Bibbuti Bhusan Sirkar of Nadia
- 15 Nidhi Uria of Cuttack
- 16 Panu Uria of Cuttack
- 17 Sachindra Nath Chatterjee of Calcutta
- 18 Indu Bhusan Bose of Calcutta.

The last four have subsequently been released on bail.

Voluminous correspondence, explosives, guns, rifles, revolvers, dynamite and articles used in the manufacture of explosives were recovered from the garden house, from the grounds of the house and buried under-ground as per list enclosed. Some of the under-ground hiding places were pointed out by the accused Barindra Kumar Ghosh.

2. At 38-4 Raja Nava Kissen Street accused Hem Chandra Das was arrested and a quantity of incriminating correspondence was seized together with other articles as per list enclosed.*

3. At 15 Gopi Mohan Dutt's Lane accused Kanai Lal Dutt of Hoogly and Nirapodo Rai of Nadia were arrested with a quantity of correspondence and other papers as per list enclosed.

4. At 30-2 Harrison Road some papers were found and taken possession of *vide* list enclosed.

5. At 134 Harrison Road Nogendra Nath Gupta of Dacca, his brother Nalini Gupta of Dacca, Asoke Chandra Nandy of Comilla,

Bejoy Sen Gupta of Burdwan and Motilal Bose of Jessore, were arrested with a quantity of bombs, dynamite, cartridges and other explosives as per list enclosed. It may be noted that, there is evidence to show that these articles were removed to this place by the accused Ullaskar Dutt from 15 Gopi Mohan Dutt's Lane. These six persons (including Ullaskar) have been placed under trial under Sections 19 (f.) and 20 of Act. XII, of 1878 (Arms Act.)

6. At the "Navasakti" Office were arrested accused Arabinda Ghose, Abinash Chandra Bhattacharjee and Sailendra Kumar Bose of 24-Pergannas. With them was found a quantity of incriminating correspondence as per list enclosed.

On 3-5-08, accused Din Dayal Bose of 24-Pergannas was arrested at No. 80 College Street where a quantity of correspondence was found and seized as per list enclosed.

On 5-5-08, accused Narendra Nath Gossain of Sorampur, Hoogly, was arrested at that place with lots of papers, cartridges, buck-shot and caps as per list enclosed.

On 10-5-08, accused Sudhir Sirkar of Khulna and Hrishikesh Kanjilal of Hooghly were arrested at their homes with some papers and correspondence.

Of the persons thus arrested, the following have confessed.

1. Upendra Nath Banerjee, to the existence of the secret society and his being a member of it.

2. Barindra Kumar Ghose to the above fact and also to his participation in the preparation for derailing His Honor's special between Mankundu and Chandernagore Railway Stations, the Narayangarh derailment case in December last, the French Chandernagore Bomb outrage case in April last and to the abetment of the Muzafferpur murder case, on 30-4-08.

3. Indu Bhusan Rai to the existence of the secret society and to his participation in the French Chandernagore bomb outrage case.

4. Bibhuti Bhusan Sirkar to the existence of the secret society and to his complicity in the preparation for derailing His Honor's special between Chandernagore and Mankundu Railway Stations and to his participation in the Midnapur train wrecking case.

5. Ullaskar Dutt to the existence of the secret society, to his complicity in the attempt at derailing His Honor's special near Chandernagore Railway Station at or about the last Dewali, preparation for the same during the last winter between Chandernagore and Mankundu Railway Stations and to the abetment of the Narayangarh train wrecking case, the French Chandernagore bomb outrage case and the Mozafferpur murder case.

6. Noren Gossian to the existence of the secret society and his

participation in the attempt at wrecking His Honor's special near Chandernagore Railway Station at or about the last Dewali and to his complicity in the French Chandernagore bomb outrage case.

7. Hrishikesh Kanjilal to his being a member of the secret society and his participation in the attempt at wrecking His Honor's special near Chandernagore Railway Station.

8. Sudhir Kumar Sirkar to his being a member of the secret society.

From the above it will appear that altogether five cases occurred as the outcome of the conspiracy of this society. These cases are :—

1. Attempt at wrecking His Honor's special train between Mankundu and Chandernagore Railway Stations at or about the last Dewali. Accused Ullaskar Dutt, Hrishikesh Kanjilal and Noren Gossain who took part in it, are under arrest. They have all confessed to their participation in it.

2. Preparation for blowing up His Honor's special between Mankundu and Chandernagore Railway Stations during the last winter. Accused Barindra Kumar Ghose, Bibhuti Bhushan Sirkar and Ullashkar Dutt who were concerned in it and have confessed to their share of the job, are under arrest.

3. Attempt at wrecking His Honor's special near Narayangarh Railway Station in Midnapur on 6-12-07. Accused Barindra Kumar Ghose, Bibhuti Bhushan Sirkar and Profulla Chaki who actually laid the mine and accused Ullaskar Dutt who manufactured it, are under arrest, excepting Profulla who committed suicide after the Mozafferpur murder case.

4. The French Chandernagore bomb outrage case on 11-4-08. In it were concerned Barindra Kumar Ghose, Narendra Gossain, Indu Bhushan Rai who have all confessed. The bomb used in this case was the handiwork of accused Hem Chandra Das and Ullaskar Dutt of whom the latter has confessed. There were two other persons of French Chandernagore concerned in this case.

5. Mozafferpur murder case on 30-4-08. The bomb made use of in this case was the handiwork of Hem Ch. Das and Ullaskar Dutt. Ullas has confessed to this fact. This plot was organised by accused Barindra Kumar Ghose who has confessed to his complicity in the crime. Of the two persons actually concerned in the murder of Mrs. and Miss. Kennedy, namely Khudhiram of Midnapur and Profulla Chaki of Bogra, the former has been arrested and confessed, and the latter committed suicide when an attempt of arresting him was being made.

On 12-5-08, Kristo Jiban Sanyal of Maldah and on 14-5-08,

Birendra Nath Ghose of Jessore were arrested. Both of them confessed to being members of the secret society.

On 13-5-08, accused Soroj Kumar Mazumdar of Jessore was arrested. He has since been enlarged on bail.

In consideration of the facts already disclosed, I submit this First Information Report, charging the members of this Secret Society under Sections 143, 145, 150, 157, 121, 121-A, 122, 123 and 124 I. P. C.

Sd. Purna Chandra Biswas,
Inspector of Police,
C. I. D., Bengal.
17-5-08.

Along with the first Information Report the following complaint together with the sanction required by Section 196 Cr. P. Code were also filed :—

Purna Chandra Biswas, Inspector of Police,
C. I. D., Bengal on solemn affirmation.

Sanction has been given to me by the Government of Bengal (the sanction Ex. 1 is here tendered by the prosecution) to prosecute certain persons under Sections 121-A, 122, 123, 124 I. P. C.

I now complain against—

- 1 Barendra Kumar Ghose
- 2 Indu Bhushan Rai
- 3 Ullaskar Dutt
- 4 Upendra Nath Banerji
- 5 Sishir Kumar Ghose
- 6 Nalini Kumar Gupta
- 7 Sachindra Kumar Sen
- 8 Poresch Chandra Maullik
- 9 Kunja Lal Saha
- 10 Bijoy Kumar Nag
- 11 Narendra Nath Buxi
- 12 Purna Chandra Sen
- 13 Hemendra Nath Ghose
- 14 Bibhuti Bhushan Sarkar
- 15 Nirapada Rai
- 16 Kanai Lal Dutt
- 17 Hem Chandra Das
- 18 Arabinda Ghose

- 19 Abinash Chandra Bhattacharji
- 20 Sailendra Nath Bose
- 21 Dindayal Bose
- 22 Narendra Nath Gossain
- 23 Sudhir Kumar Sarkar
- 24 Krista Jiban Sanyal
- 25 Hrishikesh Kanjilal
- 26 Birendra Nath Ghose
- 27 Dharani Nath Gupta
- 28 Nogendra Nath Gupta
- 29 Asoke Chandra Nandi
- 30 Moti Lal Ghose
- 31 Bijoy Ratan Sen Gupta
- 32 Susil Kumar Sen
- 33 Khudi Ram Bose

Accused 1 to 14 were arrested on May 2 at 32 Muraripukur Road, and arms, ammunition, explosives were found there.

Accused 15 and 16 were arrested at 16 Gopi Mohan Dutt's lane on May 2, 1908, correspondence was found there, I do not know what sort, accused 17 Hem Chandra Das was arrested at 38-4 Raja Naba Krista St. ; letters and other things were found there.

Accused 18, 19 and 20 were arrested at the "Navasakti" Office, letters were found there.

Accused 21 was arrested at Shambazar Tram Depot on May 3, 1908.

Accused 22 was arrested at Serampore on May 5.

Accused 23 was arrested at Khulna on May 10.

Accused 24 was arrested at Kanshat, Dist. Maldah on May 12.

Accused 25 was arrested at Chatra, I do not remember the date.

Accused 26 was arrested in Jessore District.

Accused 27 to 31 were arrested at 134 Harrison Road on May 2, 1908, there were found three bombs and dynamite and other explosives.

Accused 32 has been arrested recently at Sylhet, a telegram has been sent for him.

Accused 33 was arrested at Waini on May 1, and is at Mozafferpur under trial for murdering 2 English ladies,

These people are all accused of organizing a gang for the purpose of waging war against the Government by means of criminal force.

(Sd.) L. Birley,
19-5-08.

SANCTION.

(1) Whereas it has been made to appear to His Honor the Lieutenant-Governor of Bengal that there is reason to believe that during a period commencing from about the 16th October 1905 to date at Manicktolla (32, Muraripukur Road), Calcutta and other places, the following persons have committed offences punishable under sections 121A., 122, 123 and 124 of the Indian Penal Code, Babu Purna Chandra Biswas, Inspector of Police, Criminal Investigation Department, Bengal is hereby ordered and authorized by His Honor the Lieutenant-Governor of Bengal under the provisions of Section 196 of the Code of Criminal Procedure to prefer complaint against and to prosecute these persons, namely :—

1. Barindra Kumar Ghose, son of K. D. Ghose of 32, Muraripukur Road,
2. Indu Bhusan Rai, son of Tarak Nath Rai of Sriphaltola, Khulna,
3. Ullaskar Dutt, son of Dwijadas Dutt of Kalikanchha, Brahmanberia, Tippera,
4. Upendra Nath Banerjee, son of Roma Nath Banerjee, of Gondalpara, Fr. Chandarnagore,
5. Shisir Kumar Ghose, son of Tarini Ghose of Sagordari, Keshabpur, Jessore,
6. Nalini Kumar Gupta, son of Rajani Kumar Gupta of Harowa, Faridpur,
7. Sachindra Kumar Sen, son of Debendra Nath Sen of Sonarang, Munshiganj, Dacca,
8. Poresli Chandra Moulik, son of Jadav Chandra Moulik of Rainagar, Magura, Jessore,
9. Kunja Lal Shaha, son of Ram Lal Shaha of Mozampur, Kushtea, Nadia,
10. Bejoy Kumar Nag, son of Bepin Behari Nag of Basahabati, Bagerhat, Khulna,
11. Norendra Nath Bakshi, son of Umesh Chandra Bakshi of Mathpur, P. S., Mohadevpur, Rajshahi,
12. Purna Chandra Sen, son of Jogindra Nath Sen of Chandpur, Daspur, Midnapur.

13. Hamendra Nath Ghose, son of Rai Charan Ghose of Sagordari Keshabpur, Jessore,

14. Bhibhuti Bhushan Sircar, son of Saroda Sircar of Sutra-garh, Santipur, Nadia,

15. Nirapodo Rai, son of Rajani Kanta Rai of Baghachra, Santipur, Nadia,

16. Kanai Lal Dutt, son of Chuni Lal Dutt, Tantipara, Seram-pur, Hooghly,

17. Hem Chandra Das, son of Khettra Mohan Das of Radha-nagore, Narayangarh, Midnapur,

18. Arabinda Ghose, son of K. D. Ghose of 48, Grey Street. (Navasakti Office),

19. Abinash Chandra Bhattacharjee, son of Umacharan Bhattacharjee of Arbellia, Baduria, 24-Parganas.

20. Sailendra Nath Bose, son of Kedar Nath Bose of Arbellia, Baduria, 24-Parganas,

21. Nogendra Nath Gupta, son of Girija Prosanna Gupta of Bidgaon, Munshiganj, Dacca,

22. Dharani Nath Gupta, son of Girija Prosanna Gupta of Bidgaon, Munshiganj, Dacca,

23. Asoke Chandra Nandy, son of Mohendra Chandra Nandy of Kalikanchha, Brahmanberia, Comilla,

24. Bejoy Ratna Sen Gupta, son of Gopal Chandra Sen Gupta of Satgoria, Purbesthali, Burdwan,

25. Moti Lal Bose, son of Poresli Nath Bose of Simuria, Narail, Jessore,

26. Din Dayal Bose, son of Kedar Nath Bose of Arbellia, Baduria, 24-Parganas,

27. Norendra Nath Gossain, son of Debendra Nath Gossain of Serampur, Hooghly,

28. Sudhir Kumar Sirkar, son of Prosanna Kumar Sirkar, Civil Hospital Assistant, Khulna,

29. Kristo Jiban Sannyal, son of Kali Kristo Sannyal of Kansat, P. O. Kansat, Maldah,

30. Hrishikesh Kanjilal, son of Amar Nath Kanjilal of Chatra Serampur, Hooghly,

31. Birendra Nath Ghose, son of Trailokhya Nath Ghose of Sagordari, Keshabpur, Jessore,

32. Khudiram Bose, (under arrest in Mozafferpur),

33. Susil Kumar Sen, son of Kailas Chandra Sen of Benia-chang, P. S. Beniachang, Sylhet,

for the said offences under Sections 121A, 122, 123, 124 of the Indian Penal Code, or under any other Section of the said Code which may be found to be applicable to the case.

By order of His Honor the Lieutenant Governor of Bengal.

(Sd.) E. A. GAIT.

17th May 1908. Chief Secretary to the Government of Bengal.

(2) Whereas it has been made to appear to His Honor the Lieutenant-Governor of Bengal that there is reason to believe that during a period commencing from about the 16th October 1905 to date at Manicktola (32, Muraripukur Road), Calcutta and other places the following persons have committed offences punishable under Sections 121A, 122, 123 and 124 of the Indian Penal Code Babu Purna Chandra Biswas, Inspector of Police, Criminal Investigation Department, Bengal, is hereby ordered and authorized by His Honor the Lieutenant-Governor of Bengal under the provision of Section 196 of the Code of Criminal Procedure to prefer complaint against and to prosecute these persons, namely :—

1. Birendra Chandra Sen, son of Kailas Chandra Sen of Baniachang, P. S. Baniachang, Sylhet,

2. Hem Kumar Sen, son of Kailas Chandra Sen of Baniachang, P. S. Baniachang, Sylhet,

for the said offences under Sections 121A, 122, 123 and 124 of the Indian Penal Code or under any other Section of the said Code which may be found to be applicable to the case.

By order of His Honor the Lieutenant-Governor of Bengal.

(Sd.) E. A. GAIT.

Chief Secretary to the Government of Bengal.

23rd May 1908.

From the 4th May to the 19th May 1908 the accused persons were brought before the District Magistrate from time to time as they were arrested for the purpose of their confessions and statements being recorded. The accused Sushil Chandra Sen was brought in custody on the 20th May and his brothers Birendra Chandra Sen and Hem Chandra Sen were brought down to Calcutta and placed on their trial along with the others on the 6th June. The confessions of those who confessed are given below :—

STATEMENT OF BARINDRA GHOSE.

The statement of Barindra Kumar Ghose, aged about 28 years, made before me, L. Birley, Magistrate of the first class at Alipore on the 4th day of May 1908 in the English Language . My name is Barindra Kumar Ghose. My father's name is Doctor Krishnadhan Ghose.

Confessions.

I am by caste Kayast, and by occupation formerly contributor to *Jugantar*. I was born at Croydon in England. My home is at Mauza , Thana District . I reside at 32, Moraripukur Road, Maniktolla.

Q. Do you wish to make a statement before me ?

A. Yes.

Q. Do you understand that your statement being made before a Magistrate will be admissible in evidence against you ?

A. Yes.

Q. Is your statement being made voluntarily or has any pressure been put upon you to make it ?

A. No. It is quite voluntary.

Q. Will you tell me what you have to say ?

A. Whatever I had to say I have said in a written statement.

Q. Have you any objection to making that statement to me here ?

A. Shall I begin from the very beginning ?

Q. Yes.

A. In my statement I shall be a little vague about time because it is difficult to remember dates. I passed my Entrance Examination from the Deoghur School.

Q. At what age did you come to India ?

A. When I was one year old. After passing the Entrance Examination I went to Dacca where my brother Manmohan Ghose was Professor and I read up to the First Arts there. After that I gave up my studies and went to Baroda where my brother Arabinda Ghose was a Professor in the Gaekwar's College. There I devoted myself to the study of History and Political Literature. After being there for a year I came back to Bengal with the idea of preaching the cause of independence as a Political Missionary. I moved about from District to District and started gymnasiums. There young men were brought together to learn physical exercises and study politics. I went on preaching the cause of independence for nearly two years. By that time I had been through almost all the Districts of Bengal, I got tired of it and went back to Baroda and studied for one year. I then returned to Bengal convinced that a purely political propaganda would not do for the country and that people must be trained up spiritually to face dangers. I had an idea of starting a religious institution. By that time the Swadeshi and Boycott agitation had begun. I thought of taking men under my own instruction to teach them and so I began to collect this band which has been arrested. With my friend Abinash Bhatta-charjya (now under arrest) and Bhupendra Nath Dutta (now in

jail) I started the *Jugantar* paper. We managed it for nearly 1½ years and then gave it over to the present managers. After I gave it up I took again to the recruiting. I collected altogether 14 or 15 young men from about the beginning of 1907 until now. I educated the boys in religious books and politics. We are always thinking of a far off revolution and wished to be ready for it, so we were collecting weapons in small quantities. Altogether I have collected 11 revolvers, 4 rifles and 1 gun. Among other young men who came to be admitted to our circle was Ullaskar Dutt; I don't remember exactly when but about the beginning of this year. He said that he wanted to come among us and be useful as he had learnt the preparation of explosives. He had a small laboratory in his house without his father's knowledge and he experimented there. I never saw it, he told me of it. With his help we began preparing explosives in small quantities in the garden house at 32 Moraripukur Road. In the meantime another friend of ours Hem Chandra Das of Kundrui in Midnapore District after I think selling part of his property went to Paris to learn mechanics and if possible explosives.

Q. When did he go?

A. Approximately in the middle of 1907.

Q. When did he return?

A. Three or four months ago.

when he came back to join Ullaskar Dutt in preparing explosives and bombs.

Q. Where did he do it?

A. At 38-4 Raja Nabakrishna's Street, Calcutta, and at a house which he had rented in Bagh Bazar viz. 15 Gopi Mohan Dutta's Street.

About 5 or 6 months ago that is after press prosecution became numerous we began to think of using explosives; and wherever we went for money we were encouraged to use explosives. Thinking that to be the voice of the nation we submitted and began serious preparations. The first attempt which we made was in French Chandernagore when the Lieutenant-Governor was going to Ranchi. Ullaskar Dutt went to Chandernagore with a small dynamite mine and some fuse and detonators and tried to place it on the line just before the special came, he was disturbed at the first place where he began by people coming out of their houses. He tried another place and could not place it properly and the special came and he hurriedly dropt 2 or 3 cartridges and went away, there was a futile explosion.

Q. What is your authority for this statement?

A. I sent him. I, Ullaskar and Upendranath Banerji used to do these things in consultation. I heard the account from Ullaskar.

When the Lieutenant-Governor was coming back from Cuttack two others started with a similar object *viz.*, Profulla Chandra Chaki of Bogra and Bibhuty Bhusan Sarkar (of Santipur I believe) I went with them. We thought he would come back *via* Asansol. We went to Chandernagore.

Q. What had you with you ?

A. A mine and fuse.

We waited but he did not come that way.

Q. Did you lay the mine ?

A. Yes.

Q. Where ?

A. Between Chandernagore and Mankundu Stations. As he did not come we picked it up and brought it away; we enquired at Chandernagore Station and we were told that the Lieutenant-Governor was not coming that way.

The third time we went on a similar errand to Kharagpur.

Q. Who went ?

A. The same 3, I, Profulla and Bibhuti. We left the train at Kharagpur at 10 A.M. In the afternoon we went by train to Narayangarah where we waited on the road which is parallel to the Railway line. When it was dark we went to the Railway line and waited till 9 P.M. We waited at a spot about a mile from Narayangarah on the Kharagpur side. Here I shall give minute details because innocent people have been punished for this offence. We had with us a mine made of 6 lbs. of dynamite charged in a thick iron vessel with a lid at the top. The lid had a hold in the centre. We had a fuse made of picric compound and powder was placed in a paper tube; we used a leaden pipe in case it should get choked by ballast. While we were placing the mine the leaden pipe was found too long so we cut a piece off and threw it down there. We had a dark lantern with candles. We had various things wrapped up in paper and we had copies of the *Englishman* and of the *Bande Mataram*; we also left them behind. They had stains of picric acid on them because the fuse was wrapped up in them. We had a cardboard shoe box which we left behind. We put cotton in the cardboard box and then fuse and then cotton over it. We left the pieces of cotton behind. We ate sweets there near some bushes below the line: we left some sal leaves with the remnants of the food. We placed the mine there and between 11 and 12 at night I alone went back to Narayangarah and went by the last down passenger to Calcutta. I left behind the two boys and they placed the fuse on the line when the special came. They said they were about $1\frac{1}{2}$ miles away when the explosion took place. We took no assistance from any cooly or any one else.

After that there was a bomb outrage at Chandernagore. Hem Chunder Dass prepared the bomb. Indu Bhusan Rai of Jessore and I and Narendra Nath Gossami of Serampore went to Chandernagore together : we left the train at Mankundu Station at sunset. We went straight to Chandernagore Strand and waited till 10 P. M. We did not see the Mayor that night. We went and stayed the night under a tree near the Station and the next morning Indra and Narendra went to Serampore to Narendra's place. Naren is the son of Nando Lal Gossami, Zemindar.

I returned to Calcutta. We went to Chandernagore again the same evening.

I left the train there and Indra and Naren left at Mankundu. We met in the Strand and Indra undertook to throw the bomb. He went to the window of the dining room where the Mayor was dining with his wife : that was on the ground floor in a bye lane. He threw the bomb through the window gratings. We three went to Telinipara Ghat and crossed the river to Shamnagar and thence to Calcutta. The bomb did not work ; we came to the conclusion that the picric acid was bad. I was at a little distance when Indra threw it.

There is one more incident, that at Mozafferpore and I shall explain it. Profulla Chandra Chaki insisted on going with a bomb to Mozafferpore to do away with Mr. Kingsford because he had tried the cases against the Nationalist papers. The people in the country demanded his death.

Hem Chandra and Ullaskar prepared the bomb at 15 Gopi Mohun Dutt's Lane, it was made of dynamite put in a tin case with a wooden handle. Upendramath and I consented to Profulla going, and Hem Chandra recommended Khudi Ram Bose of Midnapore, he was also allowed to go. I gave them two revolvers because they wanted to kill themselves if they were caught. Khudi Ram Bose was an outsider. He did not know of the garden house or of 15, Gopi Mohun Dutt's Lane. He was staying with Hem Chandra Das. I took Profulla from the garden house, No. 32 Muraripukur Road to 15 Gopi Mohun Dutt's Lane and there he packed the bomb in a canvas bag and revolver with it.

Q. Where did you get the revolvers ?

A. I do not wish to say.

I took Profulla to Hem's place and left him with Khudi Ram. I was told that they started the same night.

Q. When were you arrested ?

A. The day before yesterday early in the morning.

Q. Where ?

A. At 32 Muraripukur Road.

Q. Who else was there ?

A. Ullaskar Dutt.

Upendra Nath Banerji.

Indra Bhusan Rai.

Bibhuti Bhusan Sarkar.

Pares Chandra Maullik.

Nalini Kanta Gupta.

Kunjo Lal Saha.

Sachindra Nath Sen.

Purna Chandra Sen.

Hemendra Nath Ghose

Sisir Kumar Ghose

Bijoy Chandra Nag and others

Q. What were they doing there ?

A. They are being instructed by me and Upendranath in religions and political books.

Q. Do they live there ?

A. Yes they were staying there with us.

Q. How was this household supported ?

A. I collected money from different people for supporting them. The object was to teach them and sent out missionaries and for this anarchical work.

Q. What did the Police find ?

A. They found the weapons which I have mentioned and a quantity of dynamite and some bottles of nitric acid, sulphuric acid and picric acid. These things were buried in two iron tanks in the ground and in an earthen pot.

The police found one and I pointed out the other two. There is one other thing which I can't tell you, *viz.*, the supporter's names.

Q. Are any people out now on similar errands ?

A. No.

I also want to say that we are not responsible for shooting Mr. Allen nor for the Kustia shooting case.

Q. Have you planned to destroy any one else ?

A. No. We have discussed destroying the Viceroy and the Commander-in-Chief but the plans took no practical form. We never believed that political murder will bring independence.

Q. Then why do you do it ?

A. We believe the people wanted it.

(Sd.) L. Birley.
4-5-08.

Please take down my motive for disclosing these facts. Our party was divided as to propriety of disclosing these facts. Some thought they would deny everything and take the consequences but I persuaded them all to give written and oral statements to Inspector Ramsaday Mukerji because I believe that as this band was found out, it was best not to do any other work in the country, and because we ought to save the innocent.

(Sd.) L. Birley.
4-5-08.

(Sd.) Barindra Kumar Ghose.
(Signature of the accused.)

I believe that the confession was voluntarily made. It was taken in my presence and hearing and was read over to the person making it, and admitted by him to be correct, and it contains a full and true account of the statement made by him.

(Sd.) L. Birley.
(Signature of Magistrate.)

The statement was recorded in open Court between 3 and 5 p.m. The accused was guarded by 2 constables of the Bengal Police and not by the Calcutta Police Constables who brought him. No other Police Officer was in Court.

(Sd.) L. Birley.
4-5-08.

The statement of Bibhuti Bhushan Sarkar, aged about 20 years, made before me L. Birley, Magistrate of the 1st class at Alipore on the 4th day of May 1908, in the Bengali language.

Bibhuti's Confession.

My name is Bibhuty Bhushan Sarkar. My father's name is Sarada Prasad Sarkar. I am by caste Kayst, and by occupation reading, living in Muraripukur Garden. My home is at Mouza Santipur, Sutragarh, Thana Santipur, District Nadia. I reside at 32 Muraripukur Road, Maniktolla.

I wish to make a statement. I understand that I am before a Magistrate and that what I say will be evidence against me. No one has compelled me to say anything.

I have been living at Muraripukur garden house since the time when the L. G. was returning from Cuttack and there was a plot to put a bomb on the line. What I know about that occurrence is

that I dug a hole in the line by the side of bridge : at that time Prafulla Chaki was with me. Barendra, Prafulla and I all went to Chandernagore, but the L. G. did not come by the E. I. R. line. We waited from 4 p. m. till morning and then took the mine away because the L. G. did not come. We had only made a hole and not put the mine in it.

After that when the L. G. had gone to Cuttuck, Prafulla and I went by the Puri passenger and left the train at Benapur about 2-30 p. m. From Benapur we walked in the direction of Narayan-garh to look for a place to place a bomb.

After going 4 miles we found a good place ; we went to a place by the side of the road under a tree. After 9 p.m. Prafulla and I went out to make a hole by the line and by 2-30 A.M. made it ready and walked to Khargpur and returned to Calcutta by the Bombay mail. On the day when the L. G. was expected I and Barendra and Prafulla with a mine and lead pipe which Baren produced, went to Khargpur in the Asansol passenger. We went on by the Puri passenger to Narayan-garh and then to the place where the hole was. The L. G. did not come that day. We returned with the mine to Khargpur ; Prafulla and I waited at the waiting room and Barendra returned to Calcutta. The next day Baren came to us at Khargpur with an *Englishman* newspaper. From the paper we saw that the L. G. would come next day ; next day we went by the Puri passenger arriving at Naryan-garh at 4 p.m. At 8 p.m. we went to the hole and at 11 p. m. put the mine in the hole and Baren Babu returned at midnight to Calcutta by the Puri passenger.

Prafulla and I stayed till 2-35 A. M. and at 2-30 A. M. we had placed the fuse on the line. We walked away towards Khargpur. After going two miles we heard the explosion of the mine.

I did this because the Mahamadans opposed the Hindus at Jamalpur and Comilla and I learnt that it was done on behalf of the English.

(Sd.) L. Birley.

4-5-08.

The statement of Ullaskar Dutt, aged about 22 years, made before me L. Birley Magistrate of the 1st class at Alipore, on the 4th day of May 1908, in the English language.

My name is Ullaskar Dutt. My father's name is Dwija Das Dutta. I am by caste Boidyo, and by occupation cowkeeper. My home is at Manza Kalikancha, Thana Brahmanberia, District Tippera. I reside at Sibpur P. S. Sibpur, District Howrah.

Q. Do you wish to make a statement to me ?

A. Yes.

Q. Do you understand that the statement which you will make before me being made before a Magistrate will be admissible as evidence against you.

A. Yes.

Q. Is the statement made on account of any pressure being brought to bear upon you ?

A. No. I should like to make the same statement as the written statement which I have given to the Police.

Q. Have you objection to making a statement orally to me ?

A. No.

Q. What is your story ?

A. I had known Barendra Kumar Ghosh for 4 or 5 years and 9 or 10 months ago I joined his Society.

Q. What are the circumstances under which you joined ?

A. It had been announced in the *Jugantar* that a Secret Society would be started and I had a natural inclination to join so I got introduced by Barendra.

Q. What used you to do when you joined the Society ?

A. I used to prepare explosives.

Q. When did you learn this ?

A. Before I joined.

Q. How ?

A. I made a private laboratory of my own and tried experiments with small quantities.

Q. Were you taught ?

A. No.

Q. What particular occurrences have you any information to give about ?

A. I was present at a futile attempt at train wrecking at Chaudernagore. I went myself along and I took a mine made out of an iron cylinder with dynamite in it. I could not set it properly, because the train came up very quickly and I could not arrange it.

Q. For whom the mine was intended ?

A. For Sir Andrew Fraser's special train.

Q. Who made that mine ?

A. I myself.

After that was the Khargpur affair. I did not go to that Baren, Bibhuti and Profulla Chandra Chaki went. They took another mine.

Q. Who made it ?

A. I made it.

Q. Where ?

A. In a house in Goabagan in a lane of which I forget the name. We hired the house, perhaps Baren Babu hired it.

Q. What was the mine like ?

A. It was in a cast iron cylinder ; it contained 5 lbs. of dynamite. There was a fuse made of picric acid and chlorate of potash.

Q. Did you make any explosives for use on any other particular occasion ?

A. No.

Q. Where were you arrested ?

A. At 32 Moraripukur Road.

Q. How long had you been there ?

A. I used to go there for 2 or 3 days at a time and had been in the habit of doing so for about 8 or 10 months.

Q. What used to take place there ?

A. We had a religious and moral training class for new comers. I used to read the *Upanishad* (a sacred book) there. I used also to prepare and experiment with explosives.

Q. Did any one else prepare and experiment with explosives ?

A. Not there. Hem Chunder Das, who recently came from France used to prepare explosives and bombs at his own place and at Gopi Mohun Dutt's lane.

Q. Have you anything else to say ?

A. If you question me I can say.

Q. Do you know anything about the Mozafferpore outrage ?

A. Yes. I know that Profulla Chandra Chaki and Khudiram Bose went out for that purpose. I know because I was at Gopi Mohun Dutt's Lane, when they started about a week ago in the evening.

Q. What did they take with them ?

A. A bomb.

Q. How did they take it ?

A. In a canvas bag belonging to us and to no body in particular.

Q. Do you know who made the bomb ?

A. I heard that Hem made it but I was not there when he made it.

Q. Who are the leaders of the Society ?

A. There is no recognised leader, but Barin Babu acts as a leader.

Q. Who are the members ?

A. Baren, I, Hem Chandra Das, Upendranath Banerji, Indra Bhushan Rai, Profulla Chandra Chaki, Bibhuty Bhushan Sarkar ; these are the actual workers : there are others who were new comers and used to be in the garden but have not been taken into confidence.

Q. You say you made the mine for the Khargpur affair. To whom did you give it ?

A. To Barin Babu : he took it from the house at Goabagan.

(Sd). L. Birley.

4-5-08.

I wish to add that the object of my confession is that innocent persons shall not suffer.

(Sd.) Ullaskar Dutt.

(Signature of the accused).

(Sd). L. Birley.

(Signature of the Magistrate).

The statement of Indra Bhushan Rai, aged about 18 years, made before me L. Birley, Magistrate of the 1st class at Alipore on the 4th day of May 1908, in the English language.

My name is Indra Bhushan Rai. My father's name is Tarak Nath Rai. I am by caste Kayast and by occupation Talukdar. My home is at Mouza Sripahaltolla, Thana Khulna, District Khulna. I reside at 32 Moraripukur Road, Maniktolla.

Q. Do you wish to make a statement ?

A. Yes. I have already made one.

Q. Do you wish to make it to me, a Magistrate, knowing that it can be used as evidence against you ?

A. Yes I understand.

Q. Has any one put pressure to you to make a statement ?

A. No.

Q. What have you to say ?

A. I have been living at 32 Moraripukur Road for a month and a half studying Gita and preparing shells.

Q. Under what circumstances did you first go there ?

A. I met Baren Babu 1½ months ago in College Square: I knew his name before. He told me there was a Secret Society and said he could allow me to join if I wished.

Q. Did he say what its object was?

A. No. I know already that its object was to make India free from the Foreign Yoke, and to establish a better Government.

Q. Where were you educated?

A. I was taught at the Azeegara High School in Khulna District and in 1907 March I failed in the Entrance Examination. After that I was at home for 2 months and then I wandered about. I left home because my father wanted me to marry and I wished to live a life of Brahmochari.

At Barin Babu's invitation I joined the Society and went to live at 32 Moraripukur Road. A few days after I went there I began to prepare shells with Barin Babu, Bibhuti Sircar and Prafulla Chaki.

Q. Was anything done with these shells?

A. Yes. I have thrown a bomb in Chandernagore at the Mayor. I went with Barin Babu and a Serampore man whose name I do not know. I threw a bomb at 9 p.m. into the room where the Mayor was taking his food with his wife. The bomb did not burst. I ran away after I had thrown it. We three met together in the Strand Road and Barin Babu showed me the Mayor's house and then we 3 went near the Mayor's house and Barin and the Serampore man went into a lane.

Q. Did you take part in any other occurrence?

A. No.

Q. Have you anything else to say?

A. The main object of my sacrificing my life is to set examples in the country.

Q. Who taught you these ideas?

A. I got them from studying histories viz. *Anandomath* of Bankim Babu, and Russian Revolutionary History.

(Sd.) L. Birley.

4th May, 1908.

The statement of Upendra Nath Banerji, aged about 29 years, made before me L. Birley, Magistrate of the 1st class at Alipore on the 4th day of May 1908 in the English language.

Upen's Confession.

Q. Do you wish to make a statement to me?

A. Yes.

Q. Do you understand that if you make a statement to me, a Magistrate, the statement will be admissible as evidence against you.

A. Yes.

Q. Has any pressure been used to get you to make a statement ?

A. No.

Q. What have you to say ?

A. I passed the F. A. Examination from Dupleix College, Chandernagore in 1898. I studied in the Medical College Calcutta for 2 years and I gave up my studies through failure of health for 1 year and then joined the Duff College of Calcutta where I studied for about 2 years and then joined the *Adwaita Asram* in Mayabati, Almora, for studying Hindu Philosophy and Yoga. After being there nearly 2 years I went home and was engaged as Assistant Head Master in the Garbati High School, British Chandernagore. I stuck to the post for nearly $1\frac{1}{2}$ years and was then 2nd master in the Bhadreswar English School for about a year. With a view to serve my country I gave up this post and joined the *Bande Mataram* staff as an assistant editor. I had that post for nearly a year, at this time I was a regular contributor to the *Jugantur*.

In order to carry out our work systematically I thought it necessary to found a sort of religious political society which would devote itself wholly to the cause of Indian regeneration but as I thought that the people of India would not be made to do any work except through religion I wanted the help of some *Sadhus*, I wandered about India looking for *Sadhus* but could't find any. Failing *Sadhus* I fell back upon school boys and collected them to give them religious moral and political education. Barindra Ghose had began to collect youths and in September last I joined him. Since then I have been mainly engaged in teaching the boys about the state of our country and the need of independence and that the only way left us is to fight for independence and to start secret societies in different parts of the country to propagate ideas and collect arms and rise in rebellion when the time shall be ripe. I knew that Barindra, Ullaskar and Hem were engaged in manufacturing bombs with a view to do away with the lives of those Government officials who by repressive measures hampered our work *viz.* the Lieutenant-Governor and Mr. Kingsford.

Barindra told me before he started that he was going to try to wreck the Lieutenant-Governor's train at Khargpur : when he came back he said he had laid the mine. Bibhuti and Profulla went with him. I know this because Barindra told me. He told me they had reported to him that it had been successful and they had heard a loud explosion.

Q. Do you know anything about the Mozafferpore outrage ?

A. I heard from Barindra about a fortnight ago that Profulla and Khudiram would be sent to Mozafferpore to take Mr. Kingsford's life.

Q. What did you say when you heard this ?

A. I said nothing because I was not in charge of that department, but in charge of the education of the boys.

Q. Was Profulla under your instructions ?

A. No. I used to teach the new recruits. I have made this statement because we agreed to tell the truth if arrested so that the innocent might not suffer, and that our successors may use greater caution.

(Sd.) L. Birley.

4-5-08.

The statement of accused aged about 18 years, made before me L. Birley, Magistrate of the 1st Class, at Alipore on the 11th day of May 1908, in the English language.

Sudhir's Confession.

Q. Do you wish to make a statement to me ?

A. Yes.

Q. Do you understand that I am a Magistrate and that anything which you say to me can be used as evidence against you ?

A. Yes.

Q. Has any pressure been used to induce you to make a statement ?

A. No.

Q. Where were you at School ?

A. I was a pupil at the Khulna Zilla School until nearly 2 years ago.

Q. Why did you leave ?

A. For 2 reasons, first because of the Swadeshi agitation, and secondly because I failed in 2 subjects in a School Examination.

Q. What did you do then ?

A. My father sent me to Sahebgange to my brother Narendra Kumar Sircar, who was assistant Jailor at Bhagalpur. My father wished me either to get employment or continue my studies. I had no mind to learn at the Calcutta University or to get an official employment. I therefore left my brother after about 15 days and went to Calcutta and became acquainted with Bari-lal Kumar Ghose.

Q. When was that ?

A. About a year and a half ago.

Q. How did you make his acquaintance ?

A. I met him at the *Jugantar* Office where I used to get the *Jugantar* newspaper : the office is at 41 Champatola 1st Lane. I assisted at publishing the newspaper.

Q. Who were managing it then ?

A. Abinash Chandra Bhattacharjee was Manager and there were also helping in the office Upendra Nath Banerjee, Barindra Kumar Ghose, Dindayal and Sailendra Ghose. Dindayal was only living there : he was employed by the Tramways Co.

Q. How long did you help in the office ?

A. I lived there one month. I took no pay. Upendra gave me some books and I bought others on his recommendation : he instructed me to read them.

Q. What books ?

A. "The works of Majini", "Garibaldi", "Desherkatha" by Sakaram Ganesh Deoskar, Bankim Babu's works, Bhudeb Babu's works (he was Director of Public Instruction), Uponishod, Gita. After being at the *Jugantar* office one month I went to Khulna and read these books there. I spent most of my time at Khulna and occasionally came to Maniktola and used to stay for 7 or 8 days at a time in the Garden house of Barindra. I first got to know the garden house while I was in the *Jugantar* office. Barindra took me there saying that there was a mission for religion and self-abnegation and political purposes.

Q. Who used to live at the Garden house ?

A. Upendranath Banerjee who used to teach me from the books named above. These also used to be there Barindra, Sishir Kumar Ghose, Bejoy Kumar Nag, there were many others who used to come sometimes for a day at a time or a few hours. I cannot remember their names.

Q. What were the political purposes of the mission ?

A. To serve the motherland and to serve the people.

Q. When did you last leave the Maniktolla Garden House ?

A. Nearly 2 months ago, since when I have been at Khulna, reading.

Q. How do you support yourself ?

A. I was supported by my father who is a Government Hospital Assistant.

Q. Have you anything else to say ?

A. I intended to teach illiterate people religion.

Q. How was the mission supported ?

A. Barindra had a lot of money.

(Sd.) L. Birley.
11-5-08.

The statement of accused Birendra Nath Ghose, aged about 17½ years made before me L. Birley, Magistrate of the 1st class at Alipore on the 15th day of May 1908, in the English language

Q. Do you wish to make a statement to me ?

A. Yes.

Q. Do you understand that I am a Magistrate and that if you make a statement to me it can be used as evidence against you ?

A. Yes.

Q. Have the police ill-treated you in order to get you to make a statement ?

A. No.

Q. What is your history ?

A. My father is a small landowner : I have 4 brothers viz., Satyendra Nath Ghosh, Dharendra Nath, Sailendra Nath and Jitendra Nath.

Q. Are any of the people who have been arrested related to you ?

A. Hemendra Kumar and Sishir Kumar are the sons of my father's cousin. Arabindo Ghose is the son-in-law of my cousin Bhupal Chandra Bose.

Q. Where were you educated ?

A. At Dibrugarh, which I left in October 1907. Then I went to Shillong to stay at the house of Bhupal Chandra Bose, Assistant Director of Land Records and Agriculture in Eastern Bengal. I went there with my nephew Sudhir Kumar Basu. I stayed till December and then went to Khulna to study at the National School. I stayed in Khulna with my cousin Hemanto Kumar Mazumdar who was a teacher in the school. He was transferred to Jessore National School about the end of December. After he left I stayed with Jatish Chandra Ghosh, a pleader at Khulna who is a distant relation of mine. I did not join the school because I could not get a permanent place to stay after Hemanto left. I went to my home in January. At the beginning of February I came to Calcutta with the mother of Jatish Chandra Ghose on the occasion of the Ardhodya Jog. In Calcutta, I stayed at 7 Hugul Kuria Lane, the house of Sirish Chandra Mozumdar, a relative of Jatish, and also at 46 Harrison Road with my brother Dharendra Nath Ghose, who is a student at the Ripon College.

Thence I returned home and came back to Calcutta after a few days.

Q. Why did you return to Calcutta ?

A. I wanted to study in the National College at Bowbazar Street, Calcutta, but I could not get a room in any mess. I met Indra Bhushan Ray at Khulna in December : he used to visit Khulna, his home being near there, he used to associate with the students at Khulna. I met him again in February when I came to Calcutta. I was then staying at 46 Harrison Road. I met Indra Bhushan Ray in the road near 46 Harrison Road and he told me that there was an Asram in a garden at Manicktolla, where Gita and other Indian Philosophy was taught by Upendra Nath Banerjee. As I had a religious turn of mind I went with him to that garden.

Q. When was that ?

A. At the beginning of March.

Q. What time of day did you go there ?

A. About 2 p. m.

Q. What did you find there ?

A. I found some boys and young men there and talked with Upendra Nath Banerjee. He told me to read Gita and other books and asked me to visit the garden occasionally and to read there. I returned to 46 Harrison Road and went there again after about a week. I then stopped at the garden till the middle of March. I stayed day and night for 5 or 6 days. I was told that it was an Asram and that there was a regular class of Gita and other philosophical books. Upendra Nath Banerji was the teacher.

Q. Who else was living there ?

A. Barindra Kumar Ghose, Bibhuty Bhushan Sircar, Ulaskar Dutt, Indra Bhushan Ray, Sachindra Kumar Sen, Bejoy Kumar Nag and one or two more whose names I do not know.

Sachindra, Bejoy Kumar Nag and I regularly read Gita and the others studied privately.

I left the garden about the middle of March and returned to 46 Harrison Road. I went home again. I came back again to 46 Harrison Road and went to Deoghur with Dharendra, my brother ; that was about April 7th. I stayed till May 9 or 10 : I then went home on May 13 and was arrested on May 14 in the morning.

Q. On how many occasions did you stay at the garden ?

A. For about a week I went there daily and returned at night to 46 Harrison Road ; and for about a week I stayed there day and night.

Q. Do you know what the object of the Society there was ?

A. I was given some hints that after one year's complete religious training I should have to serve my country.

Q. How serve your country ?

In any way in which Upendra Nath might describe ; he told us that after a year's training we should be employed in work but did not say what kind of work but I was given to understand that I was to sacrifice my life and other secular concerns and do nothing except serve the country.

Q. Do you know what else was going on at the garden ?

A. No.

(Sd.) L. Birley.

15-5-08.

The statement of accused Rishikesh Kanjilal aged about 29 years, made before me L. Birley, Magistrate of the 1st class at Alipore, on the 11th day of May 1908 in the English language.

Q. Do you wish to make a statement to me ?

A. Yes.

Q. Do you understand that I am a Magistrate and that your statement will be admissible as evidence against you ?

A. Yes.

Q. Has any pressure been put upon you to get you to make a statement ?

A. No.

Q. What is your statement ?

A. I passed the Entrance Examination from the Baranagar Victoria School and F. A. from the General Assembly's Institution in Calcutta. I went in for the B. A. Examination from the Duff College and failed. While I was at the Duff College I became acquainted with Upendra Nath Banerjee of Chandernagore who became my friend. When we were in the 4th year class we thought of renouncing this world and leading the lives of *sannyasis*. Upen left College and went to Mayabati in Almora ; after the examination I went to Benares and stayed with my brother and studied Hindu philosophy and Yoga. I was about a year at Benares and then I went to Mayabati and found my old friend Upendra Nath Banerjee there and I became acquainted with Ram Chandra Prabhu of Madras. I studied there Eastern and Western philosophy and so did my friends. When there was an earthquake at Kangra valley Upen was sent to help the distressed. From there he went to Chandernagore, and when Lord Curzon trampled over the prayers and protests of the people and partitioned Bengal I decided to return to Bengal to serve the cause of my country instead of shutting myself up. I was convinced that

we must get freedom and that it was a sin not to stand against the tyranny and oppression of the Government. I therefore came to Hardwar and preached Swadeshi among the *Sadhus* and induced some of them to do the same. I was there a fortnight and then came to Benares. There I received a letter from Upen and came to Gondalpara in Chandernagore. There Upen showed me a few copies of the *Yugantar* and I studied them and I decided that we must secure the political independence of our country, and I asked Upen to enquire in the *Yugantar* office whether there was really such organization to free our country from the foreign yoke in Calcutta. That day I went to Chatra and I resolved to get a post in the education department so that I might preach to young boys the idea that it was by ceaseless hypocrisy and everlasting duplicity the English had conquered our country; and I got a post in Bhadreswar High English School. Four or 5 months after I heard from Upen that there was really a secret society at Calcutta under the leadership of Barindra Kumar Ghose, and he told me that he would join it soon. He was then also a teacher in the Bhadreswar English School. I then got a post at the Baidyabati School and Upen was appointed as assistant editor on the *Bande Mataram* staff.

Last hot weather I went to the *Jugantar* Office at 20 Champatolla Lane and I was introduced to Barindra by Upendra and thereafter I became friends with Barindra. He asked me to see him now and then. I returned home and afterwards I saw him at 24 Goubagan Lane and I used to go to the Moraripukur Garden House. I went there 4 or 5 times.

Q. What was going on there ?

A. On one occasion when I was there Barin told me that Upen was looking out for suitable place to establish an "Asram" for imparting religious and political education to boys. On one occasion when I was at 24 Gou Bagun Lane I saw Barin, Ullaskar and another boy whose name I forget, they were ready to start for Chandernagore. I asked them what they would do and they told me that they were going to blow up the Lieutenant Governor's train. While we were talking Narendra Nath Goswami of Serampore came there. We five went to Howrah Station and thence by train in the evening towards Chandernagore. Barin asked Naren and me to help Ullaskar and the other boy by conducting them safely to Chatra. Naren and I alighted at Serampore and after sunset hired a carriage and went to Chandernagore. We left the carriage just opposite the Church and walked to Chandernagore Railway Station. There he waited 2 hours but did not find Ullaskar and the boy. But when we saw the Lieutenant Governor's Special passing safely we heard only 2 reports like those of crackers between Mankundu and Chandernagore Railway Station. We waited there half an hour more, but finding that Ullaskar and the boy did not come we went home.

After the Khargpur incident I saw Barin and he told me that he, Profulla Chaki and others went to Khargpur and laid the mine.

On another occasion I was at the Moraripukur Road Garden House and there I saw Upen. We had a conversation about our organization and Upen told me that bombs were being prepared. I asked who prepared them and where they were kept but Upen told me that I should know the whole thing when I became a permanent lodger in the garden house and he asked me to join them shortly. I had been at 23 Scott's Lane on one occasion and there I found Upen, Barin, Abinash Chandra Bhattacharji and a boy of Utterpara who had come to take Arabinda Ghose to Utterpara for a lecture. Arabinda was in the house upstairs. I say this because Barin told me and I also saw him come down and get into a carriage. That night Barin took me to 78 Russa Road Bhawanipur and Upen accompanied us. I found there 4 and 5 boys whose names I did not enquire. Upen told Barin and me that the Mayor of Chandernagore prevented a public meeting being held and that he should be taught a lesson. I stopped there for the night and I saw Ullaskar Dutt there. Next day I came home and 2 days after Narendra Nath Goswami of Serampore and a boy came to my house at Chatra and told me that they would go to kill the Mayor of Chandernagore that night and asked me to provide lodging for the boy at night in my house. The boy did not return to my house that night. After that I did not come to Calcutta because I have had dysentery. I do not know about the Kingsford affair or the Allen shooting case, nor have I had any conversation with members of the Society about those affairs.

Q. Are you a member of the Society ?

A. I was not a registered member but I was to join them soon. I saw three revolvers when we went to Chandernagore. I was told by either Upen or Barin that Ullaskar was one of the bomb makers.

(Sd.) L. Birley.

11-5-08.

English Translation of the statement of accused Narendra Nath Goswami made on 5-5-08 before Mr. L. Birley, District Magistrate, Alipore.

Q. Do you want to say anything before me ?

A. Yes.

Q. Do you understand that I am a Magistrate and whatever you will say before me may be taken as evidence against you.

A. Yes.

Q. Has any one taught you anything by force.

A. No.

Q. What do you want to say ?

A. When the Government at the time of the Partition refused to listen to our petition, we tried to have "Swaraj" (Self-Government). I made the acquaintance of Barin about 2 years ago. My heart was touched by reading the "*Jugantar*" paper. After the conviction of Bhupendra Nath Dutt, I tried to raise subscription to conduct the paper. I came to be acquainted with Hem Chandra Das, Upendra Nath Banerjee and Ullaskar Dutt.

Q. What did you do with them.

A. I didn't stay with them but held conversation with them on the subject of "Sawraj."

Q. How was this Society maintained.

A. I do not know. Barin was the head. He knows everything.

Q. Did you do anything in particular.

A. I did. Barin came to me on the day next previous to the Bomb explosion in the Mayor's house, and asked me to see him in the Maniktollah Garden the following day. Barin went away. I followed him the next day. From the garden I, Barin and another boy went to Hem Das's house at 2 or 3 P. M. I don't know the name of the boy. From there we started at 3 P. M. The boy was with us. He had a bag with him with three revolvers and a bomb. We came to Howrah by tram car and thence went to Chandernagore. There we seated ourselves by the side of the Ganges. Three others joined us there from Chandernagore. I do not know them. Barin ordered one of them to look up what the Mayor was doing then. He returned without any information. Nothing happened that day. We stayed that day in a house in Chandernagore. I had never been to the place before this and do not know the way well. When we went to the house there was a man there then. We three stayed there that night. At about 4 in the night we came to Chandernagore Station leaving our things there. I and the lad got into the same train and came down to Serampur. Barin went on to Calcutta. I and the lad went to my house. At about 5-35 P. M. we got a carriage and went to Mankundu and then to Chandernagore. On reaching the Ghat we saw Barin with the three boys and the bag. Barin ordered one of the boys to see what the Mayor was doing. The boy returning said that the Mayor had sat to his meal. I then went towards the Mayor's house with the boy who had come with us from Calcutta and another boy. We (i. e., I and the boy

from Calcutta and another boy of Chandernagore) had each a revolver in our hands. The boy who had come with us from Calcutta had also a bomb with him. Barin and the two others followed us at great distance. When I was 50 yds. off from the Mayor's house the boy ran up and threw the bomb into the house through the window. There was a sound then like that of *Pataka* and we three fled away to the side of the Ganges and came to Shamnagore in a ferry boat. We joined Barin on the Ganges side. At Shamnagore we took a carriage and came to Maniktolla garden. The next day in the morning I went to Serampur.

Q. Why did you do this ?

A. My blood became heated on reading the *Jugantar* paper ; that is, my mind underwent a change.

(Sd.) L. Birley,
5-5-08.

The statement of accused Kristo Jiban Sanyal, aged about 17 years. Made before me L. Birley, Magistrate of the 1st class at Alipore on the 16th day of May 1908.

Q. Do you wish to make any statement to me ?

A. Yes.

Q. You know that whatever statement you will make before me will be evidence against you. I am a Magistrate.

A. Yes.

Q. Has the Police oppressed you in any way ?

A. No.

Q. What statement will you make ?

A. I used to study (or read) in the Rajsbahi Collegiate School up to September 1906. The Lieutenant-Governor went to see the school in the month of July and about 135 students did not go to school, because we did not want to make *Sadlam* to Fuller Sahab. For this reason four students were expelled namely, I, Norendra Buxi, Girija Kanto. Mukutinani and Anantalal Roy.

Q. What happened after that ?

A. I went to study in the Rangpur National School. I was a student there from the month of Aughran (November and December) till the month of Joisto, (May and June). From there I went home. I read about the Giridih National School in the "*Nabasakti*". On hearing this I wrote a letter to Noren Buxi as to whether he should study there. He consented. I went to study at Giridih. Naren went a week later. We studied there

from the month of Sraban (July and August) till the month of Aswin (October and November). After that we went home during the Poojah Vacation. After the vacation we again went to study at Giridih. We studied there up to the month of Baisak (April and May). After appearing at the examination I wrote to Poresch Chandra Mallick that I was going to Calcutta. I made the acquaintance of Paresch at Rungpur. After writing the letter I came to Calcutta with Naren Buxi and on arrival there I stayed at a mess in 44/3, Harrison Road for about 2 or 3 hours. Paresch Chandra Mallick came there. I and Naren went with him to the Manik-tollah Garden. I stayed there for 15 days and used to remain there day and night.

Q. Who were there?

A. Upendra Nath Banerjee.

Barindra Nath Ghose.

Narendra Nath Buxi.

Bibhuti

Indro.

Sachin.

Paresch.

Ullas Dutt.

Profulla Chaki.

} These persons always remained
there. Others stayed there
occasionally.

Q. What was taking place there?

A. Barin Ghose used to read Gita to me and Upen Banerjee used to read Upanishad to me. Barin also used to read about the Russo-Japanese War. Ullas Dutt delivered lectures regarding explosives on 2 days.

Q. How many of you were present when Ullas delivered lectures about explosives.

A. All those who were then staying at the Garden were present.

Q. What was the object of these persons?

A. To learn Gita and Upanishad and for the strength and good of the country.

Q. Did you see anything in the garden?

A. I saw a long gun inside the room.

Q. When you were staying there, did any one leave the place to do any work?

A. Profulla Chaki went out with Barin. Four days after they left I went home. We went with Nirmal one day to Bhownipore. He went to engage a house there for our men. A house was available, but was not engaged.

(Sd.) L. Birley.

16-5-08.

On the 23rd June the accused Narendra Nath Gossain was tendered pardon under Section 337 Cr. P. Code. He having accepted it, was discharged under Sec. 209 Cr. P. C. but detained in custody and was examined as a witness for the Crown. Altogether 222 witnesses were examined by the Crown from the 19th May to 15th August.

When the inquiry was drawing to a close the following orders were passed by the District Magistrate on 15th August 1908.

Examined witness No. 222. No more witnesses present. At this stage Counsel for the prosecution informs me that he has certain other evidence which he desires to produce at the trial. The evidence referred to is of two kinds (1) translations of correspondence, books and reports and explanations of manuscript plans already admitted in evidence and files of the *Jugantar*, *Norankati*, *Bande Mataram* and *Sandhya* Newspaper. (2) New evidence including evidence of searches of houses of certain of the accused who were sent up after this trial began but are not yet before me, and evidence as to the history of certain presses, and of the *Bande Mataram* and *Jugantar* being printed at the *Sandhya* Office. It is proposed that if satisfied with the evidence I should commit the accused without recording this further evidence. With regard to the 1st kind of evidence I hold that there is no objection to committing the accused without first taking this evidence, and Counsel for the defence being asked whether the defence objects does not express any opinion. There will be delay in obtaining it and the evidence has as a matter of fact been already admitted; with regard to the 2nd kind of evidence I hold that sufficient evidence has already been given before me to justify commitment of the accused and I wish to commit them without further delay. The higher Court will then decide whether this further evidence is to be admitted. Counsel for the prosecution being satisfied with this I shall not record further evidence before commitment. Counsel addressed the Court with reference to the charge and has asked me to consider the propriety of charging accused Barindra for abetment of murder. This question having been raised I postpone asking him to answer the question as to whether he claims to be tried as a European British subject. He will be asked to answer after he is informed of the charge. This is explained to him. I shall require some days to go through the evidence further. The accused are asked whether they wish to make any further statements evidence having been taken after their examination. None of them wish to make further statement. Postponed to August 19th. If I am not ready then I will give previous notice.

(Sd.) L. B.

19-8-08. I have informed Barindra Kumar Ghose that he will be tried for abetment of murder and explained that if he claims his

rights as a European British subject he will be tried by the High Court and if not, he will be tried by the Sessions Court. He says he does not claim the right. Accused 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 32, 33, and 34 charged under Sections 121, 121A and 123 I. P. C. and committed for trial by the Court of Sessions.

The accused declined to cite any defence witnesses. I have explained to them that under Section 211, C. P. C. they are required to give a list of their witnesses at once but that they will be allowed till to-morrow to do it.

(Sd.) L. Birley.

26-8-08. An application has been made to me to-day on behalf of the prosecution asking me to commit Bariudra Kumar Ghose under Sec. 121, 121A & 123 I. P. C. along with the 30 accused already committed. At the time when the question of committing him for abetment of murder was first raised, I stated that if I did commit him for that offence I should not also commit him for the offences under Chapter VI. I have again given the most careful consideration to the question and I find no reason for altering my decision. It is in my opinion desirable that when evidence is offered of a convincing nature which shows that a man has committed specific offences, he should first be tried for committing such offences in preference to trying him in connection with a general conspiracy. The principal involved in this case is the same as that which is applied in the common case of a gang of thieves or dacoits; if there is definite evidence of an individual being guilty in a specific theft or dacoity he is tried for that offence in preference to being tried with the gang. This is no bar to his being tried with the gang when he has first been tried for the specific offence, but it is not the custom to try him for both at the same time. Similarly in this case I hold that any person against whom there is evidence likely to secure conviction that he has committed a serious offence should first be tried for that offence. This is no bar to his being subsequently tried for the general conspiracy. If there were other accused who could be tried for specific individual acts I would commit them for trial for such acts, but there are not. Of the five overt acts three were committed in French territory, for these offences the accused cannot be tried here; in the Narayanagarh case there is no evidence independent of confessions and approver which directly implicates any of the accused. In the Mozafferpur case Barindra Kumar Ghose is the only man against whom there is such evidence as is likely to secure conviction. I therefore decide that it is proper that Barindra should first be tried for this individual offence. If after he has been so tried it is desired to try him also with reference to the conspiracy, there

is nothing to prevent him from being so tried. I decline now to commit him for trial under Section 121, 121A and 123 I. P. C.

(Sd.) L. Birley.

2-9-08. The High Court have ordered me either to discharge Barindra Kumar Ghosh or to commit him for trial under Sec. 121, 121A and 123 I. P. C. The evidence against him is stronger than that against any of the other accused. I shall therefore commit him for trial.

I have informed him that I am going to charge him under Sections 121, 121A, and 123 I. P. C. and asked him whether he intends to claim his right as a European British subject. He says he does not wish to claim his rights. He is charged under Sec. 121, 121A, and 123 I. P. C. and committed for trial by the Court of Sessions.

(Sd.) L. Birley

THE SECOND BATCH.

When these accused persons were committed to take their trial before the Court of Sessions several other persons who had subsequently been arrested were formed into a second batch and the preliminary enquiry into their case was made by the learned District Magistrate. These persons were:-

1. Debo Brata Bose
2. Indra Nath Nandi
3. Nikhileswar Ray Mullik
4. Jotindra Nath Banerjee
5. Bejoy Chandra Bhattacharjee
6. Bal Krishna Hari Kane
7. Provash Chandra Deb
8. Charu Chandra Roy
9. Hari das Dass.

Complaint was preferred against them and Government sanction was put in and altogether 55 witnesses were examined by the Government. Charges were framed against all, except 4,8,9, (who were discharged), under sections 121, 121A and 123 i. P. C. and they were committed on 14th September 1908, to take their trial before the Court of Sessions along with the other accused persons already committed by the same Magistrate.

The charges as drawn up by Mr. L. Birley were as follows :—

I, L. Birley, District Magistrate of 24-Pergunnahs, hereby charge you accused 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34 (names on paper attached).

First. That you on or about the 12 months preceding May, 15, 1908 at various places in Bengal, including 32, Muraripukur Road, Maniktolah, which is in my jurisdiction did wage war against the King, attempted to wage war against the King, and abetted the waging of war against the King, and thereby committed an offence punishable under section 121 of the Penal Code, and within the cognisance of the Court of Sessions.

Secondly. That you, on or about the 12 months preceding May 15, 1908 at various places in Bengal, including 32, Muraripukur Road, Maniktolah, did conspire to wage war against the King, and to deprive the King of the Sovereignty of British India and did conspire to over-awe by criminal force the Government of India and the Local Government of Bengal and thereby committed an offence punishable under Section 121 A of the Indian Penal Code, and within the cognisance of the Court of Sessions.

Thirdly. That you, on or about the 12 months preceding May 15, 1908 at various places in Bengal including 32, Muraripukur Road, Maniktolah, did by illegal omissions conceal the existence of a design to wage war against the King, intending and knowing that by such concealment you would facilitate the waging of such war and thereby committed an offence punishable under Section 123 of the Indian Penal Code and within the cognisance of the Court of Sessions.

And I hereby direct that you be tried by the said Court on the said charges.

L. BIRLEY.

Dated 19th August, 1908.

District Magistrate.

24-Pergunnahs.

Names of accused charged under Secs. 121, 121A, and 123
I. P. C.

- | | |
|----------------------------|---------------------------|
| 2. Indra Bhusan Roy. | 3. Ullaskar Dutt. |
| 4. Upendra Nath Banerjee. | 5. Sishir Kumar Ghose. |
| 6. Nalini Kumar Sarkar | 7. Sachindra Kumar Sen. |
| Gupta. | |
| 8. Paresh Chandra Maulik. | 9. Kunja Lal Sen. |
| 10. Bejoy Kumar Nag. | 11. Narendra Nath Bakshi. |
| 12. Purna Chunder Sen. | 13. Hemendra Nath Ghose. |
| 14. Bibhuti Bhusan Sarkar. | 15. Nirapada Rai. |

- | | |
|---------------------------|------------------------------------|
| 16. Kanai Lal Dutt. | 17. Hemchandra Das. |
| 18. Arabinda Ghose. | 19. Abinash Chandra Bhattacharjee. |
| 20. Sailendra Nath Bose. | 21. Dindoyal Bose. |
| 23. Sudhir Kumar Sarkar. | 24. Krista Jiban Sanyal. |
| 25. Hrishikesh Kanjilal. | 26. Birendra Nath Ghose. |
| 27. Dharani Nath Gupta. | 28. Nagendra Nath Gupta. |
| 29. Asok Chandra Nandi. | 32. Sushil Kumar Sen. |
| 33. Birendra Chandra Sen. | 34. Hem Chandra Sen. |

(Sd.) L. BIRLEY,
Dist. Magistrate,
19th August 1968.

THE TRIAL



Babu Ashutosh Biswas, M.A., B.L., Public Prosecutor.

THE TRIAL.

In the Court of the Additional Sessions Judge, Alipur (24-Purghauwas).

from

19th Oct. 1908—14th April 1909.

Judgment on 6th May 1909.

Judge—

C. P. Beachcroft, Esq., I. C. S.

Assessors

Babu Gurudas Bose.

„ Kedarnath Chatterjea.

Counsel for the Crown—

Mr. Eardley Norton.

Mr. Barton.

Babu Ashutosh Biswas, M.A., B.L. Public Prosecutor, Alipur.

Mr. Withal, Solicitor for the Crown.

Counsel and Pleaders for the Accused—

Mr. B. Chakraborty)
Mr. K. N. Chowdhry) for a few days only.

Mr. C. R. Das.

„ P. Mitra.

„ E. P. Ghose.

„ J. N. Roy.

„ R. C. Bonnerjea.

„ R. N. Roy.

„ P. Lal.

Babu Hemendranath Mitra—for a few days only.

„ Nirode Chander Chatterjea, M.A., B.L.

„ Sarat Chander Sen, B.L.

„ Bejoy Krishna Bose, B.L.

„ Nagendranath Banerjea, M.A., B.L.

„ Narendranath Bose, M.A., B.L.

„ Dwijendranath Mukerjea, B.L.

„ Tincouri Chatterjea, B.L.

„ Banku Behary Mullick Chowdhry, B.L.

Messrs Manuel and Agarwalla—Solicitors for the Accused,

CHARGES WITH ONE HEAD.

That you, on or about the 12 months preceding May 15th, 1908, at various places in Bengal, including 32, Muraripukur Road, Maniktola, which is within my jurisdiction, collected men, arms or ammunition, or otherwise prepared to wage war with the intention of either waging or being prepared to wage war against the King-Emperor

And I hereby direct that you be tried by the said Court on the said charge.

(1) Barendra Kumar Ghose.

(2) **Indra Bhusan Rai.**

(3) Ullaskar Dutta.

(4) Upendra Nath Banerji.

(5) Sisir Kumar Ghose.

(6) Nalini K. Sen Gupta.

(7) Sachindra K. Sen.

(8) Poresb Ch. Maullik.

(9) Kunja Lal Saha.

(10) Bijoy Kumar Nag.

(11) Norendra Nath Bakshi.

(12) Purna Ch. Sen.

(13) Hemendra Nath Ghose.

(14) Bibhuti Bhushan Sarker.

(15) Nirapada Roy.

(16) Hem Ch. Das.

(17) Arabinda Ghose.

(18) Abinash Ch. Bhattacharji.

(19) Sailendra Nath Bose.

(Sd.) C. P. BEACHCROFT,
Addl. Sessions Judge.

(20) Din Doyal Bose.

(21) Sudhir Kumar Sirker.

(22) Kristo Jiban Sanyal.

(23) **Hrishi Kesh Kanjilal.**

(24) Birendra Nath Ghose.

(25) Dharani Nath Gupta.

(26) Nagendra Nath Gupta.

(27) Asoke Ch. Nandy.

(28) Susil Kumar Sen.

(29) Birendra Chandra Sen.

(30) Hem Ch. Sen.

(31) Debabrata Bose.

(31) **Indra Nath Nandy.**

(33) **Nikhileswar Roy Mullick.**

(34) Bijoy Ch. Bhattacharji.

(35) Bal Kissen Hari Kani.

(36) Probbash Ch. Deb.

(37) Charu Ch. Roy.

CHARGES WITH ONE HEAD.

I, C. P. Beachcroft, Esq., Addl. Sessions Judge, 24-Perghs., hereby charge you as follows :—

That you, on or about the 12 months preceding May 15th, 1908, at various places in Bengal, including 32, Muraripukur Road, Maniktola, which is in my jurisdiction, did wage war against the King, attempted to wage war against the King, and abetted the waging of war against the King and thereby committed an offence punishable under section 121 of the Indian Penal Code, and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried by the said Court on the said charge.

Dated at ALIPORE,	} (Sd.) C. P. BEACHCROFT,
The 20th day of October 1908.	
	Addl. Sessions Judge.

In consequence of several objections put in by the defence the following amended or additional charge was drawn up and was read over to the accused on the 12th February, 1909, during the course of the trial. It is given here for the sake of convenience.

CHARGES.

I, hereby charge you (names given below) as follows :—

First.—That you, on or about the 12 months preceding May 15th 1908, at various places in Bengal including 32, Muraripukur Road, Maniktola, waged war against His Majesty The King-Emperor of India and thereby committed an offence punishable under Section 121 of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Secondly.—That you, on or about the 12 months preceding May 15th, 1908, at various places in Bengal including 32, Muraripukur Road, Maniktola, attempted to wage war against His Majesty the King-Emperor of India, and thereby committed an offence punishable under Section 121 of the Indian Penal Code and within the cognizance of the Court of Sessions.

Thirdly.—That you, on or about the 12 months preceding May 15th, 1908 at various places in Bengal including 32 Muraripukur Road, Maniktola, abetted one another and other persons in waging war against His Majesty the King-Emperor of India, and thereby committed an offence punishable under Section 121, of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Fourthly :—That you, on or about the 12 months preceding May 15th 1908, at various places in Bengal including 32, Muraripukur Road, Maniktola, conspired among yourselves and with other persons to commit all or any of the offences under Section 121, I. P. Code, as set forth in the above three counts, and thereby committed an offence punishable under Section 121A of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Fifthly :—That you, on or about the 12 months preceding May 15th, 1908, at various places in Bengal including 32, Muraripukur Road Maniktola, conspired among yourselves and with other persons to deprive His Majesty the King-Emperor of India of the Sovereignty of British India or of a part thereof, and thereby committed an offence punishable under Section 121 A of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Sixthly :—That you, on or about the 12 months preceding May 15th, 1908, at various places in Bengal including 32, Muraripukur Road, Maniktola, conspired amongst yourselves and with other persons to overawe by criminal force the Government of India or the Local Government of Bengal, and thereby committed an offence punishable under Section 121A of the Indian Penal Code, and within the cognizance of the Court of Sessions.

Seventhly :—That you, on or about the 12 months preceding May 15th, 1908, at various places in Bengal including 32, Muraripukur Road, Maniktola, collected men, arms, or ammunitions or otherwise prepared to wage war with the intention of either waging or being prepared to wage war against His Majesty the King-Emperor of India and thereby committed an offence punishable under Section 122 of the Indian Penal Code and within the cognizance of the Court of Sessions.

Eighthly :—That you, on or about the 12 months preceding May 15th, 1908, at various places in Bengal including 32, Muraripukur Road, Maniktola, concealed by illegal omissions the existence of a design to wage war against His Majesty the King-Emperor of India intending by such concealment to facilitate, or knowing it to be likely that such concealment would facilitate the waging of such war, and thereby committed an offence punishable under Section 123 of the Indian Penal Code and within the cognizance of the Court of Sessions.

And I hereby direct that you be tried on the said charges.

Dated this 12th day of February, 1909.

(Sd.) C. P. BEACHCROFT,
Additional Sessions Judge.

1 Barendra Kumar Ghose.	20 Dindayal Bose.
2 Indra Bhusan Roy.	21 Sudhir Kumar Sarkar.
3 Ullaskar Dutt.	22 Krishna Jiban Sannyal.
4 Upendra Nath Banerjee.	23 Hrishikesh Kanji Lal.
5 Sishir Kumar Ghose.	24 Birendra Nath Ghose.
6 Nalini Kanta Sircar Gupta.	25 Dharani Nath Gupta.
7 Sachindra Kumar Sen.	26 Nagendra Nath Gupta.
8 Paresh Chandra Maulik.	27 Asok Chandra Nandi.
9 Kunja Lal Sah.	28 Sushil Kumar Sen.
10 Bijoy Kumar Nag.	29 Birendra Chandra Sen.
11 Narendra Nath Bakshi.	30 Hem Chandra Sen.
12 Purna Chandra Sen.	31 Debabrata Bose.
13 Hemendra Nath Ghose.	32 Indra Nath Nandy.
14 Bibhuti Bhushan Sarkar.	33 Nikhileshwar Roy Maulik.
15 Nirapada Roy.	34 Bijoy Ch. Bhattacharjee.
16 Hem Chandra Das.	35 Bal Krishna Hari Kani.
17 Arabinda Ghosh.	36 Provash Chandra Deb <i>alias</i>
18 Abinash Ch. Bhattacharjee.	Manik Lal Deb.
19 Sailendra Nath Bose.	

Before the proceedings commenced the defence took several objections and during the course of the trial other objections were taken from time to time. It would be convenient if they were summarised and given at the outset, as it was submitted they affected the whole trial. They were as follows :—

Legal objections.

- (1) (a) The Chief Presidency Magistrate of Calcutta having taken cognisance of the case on the 2nd and 3rd May 1908, Mr. Birley, the District Magistrate of 24-Perghannas had no jurisdiction to withdraw the case from the file of the former to his own file and as such the commitment by Mr. Birley was not a valid one. The object of the withdrawal was stated to deprive the accused of a trial by Jury in the High Court Sessions.
- (b) Committing Magistrate having taken cognisance without any complaint in accordance with Sec. 196, Cr. P. C. his commitment was a nullity.
- (2) Sec. 121 I. P. C. having not been mentioned in the sanction granted by the Local Government Mr. Birley was

wrong in framing a charge under that section. Mr. Norton produced a sanction granted by the Government, and applied to frame charges under that section and section 122. It was objected to as the Sessions Court could not take cognisance of an offence as a Court of original jurisdiction.

(3) Those committed subsequently as a second batch should be separately tried from the first batch as the confessions and evidence recorded and adduced behind their back would, if admitted, seriously prejudice them.

(4) Objection was taken on behalf of Charu Chandra Roy, who was a Professor in the Dupleix College in French Chandernagore, that extradition was taken from the French Government on a charge of murder, and as he was prosecuted for political offences, the Court had no jurisdiction to try him for these offences for which no extradition was taken. (He was discharged.)

(5) That the commitment without giving the accused opportunities of cross-examining prosecution witnesses and examining defence witnesses as prayed for was illegal.

(6) The charges were vague and indistinct, no particulars were supplied to the accused. The charges under section 121 merely reproduced the words of the section, so that accused did not know whether they were charged with having waged war or with having attempted to wage war or having abetted the waging of such war. No notice was given of the person or persons whom they were alleged to have abetted or of the particular place or places where they were alleged to have committed the said offence or offences or the particular overt acts in respect thereof, nor the time when the offences were committed. With regard to charge under section 123 information should be given as to the nature of the obligation to take any steps with reference to any alleged design to wage war. (It is important to note here that when the trial had occupied nearly four months, the learned Sessions Judge drew up a fresh charge sheet giving some particulars.)

(7) Objection was taken to the examination of new witnesses in the Sessions Court about whom no notice was given at the opening of the case.

(8) The prosecution could not put in revised charges on the 10th February 1909 after the trial had gone on for months especially as objections to the vagueness of the charges were taken immediately at the opening of the case, and no steps were taken so long to remedy the same.

(9) That the proceedings were without jurisdiction in as much there had been misjoinder of charges and persons, (vide section 233 Cr. P. C.)

(10) The Committing Magistrate having taken cognisance of the case before the confessions were recorded, he had no power to record the same under section 164 Cr. P. C. and they were invalid and inadmissible, also as the Magistrate put questions to the accused with reference to the case while recording the same.

(11) Objection was also taken to much of the evidence in the case as irrelevant and inadmissible especially those relating to—

- (a) Searches at 4 Raja's Lane, Sil's Lodge, 15 Gopi Mohan Dutt's Lane, 12 Wellington Square, 30½ Harrison Road, the *Bande Mataram* office.
- (b) Oral and documentary evidence relating to various newspaper articles and the alleged connection between the papers and with them and the conspiracy.
- (c) The various meetings held in different parts of the country.
- (d) The alleged volunteers as a class.
- (e) Conviction of some of the accused and other persons for certain alleged offences.
- (f) Judgments and records of various cases.
- (g) Searches, as none of them were legally and properly conducted and proved.

All these objections were overruled and Mr. Norton proceeded to open the case for the Crown which he did for 6 days and then called evidence.

P. W. 1. Purna Chandra Biswas. Inspector, C. I. D.—Proved his complaint and the Government sanctions. While investigating Naraingarh train wrecking case got some clue. From 8th March 1908 was investigating in reference to the men concerned in this case. Employed men to watch movements of Aravinda, Barindra and others. Got reports from time to time. Getting information of Muzzafferpur murder on 1st May he drew up a list of the places frequented by these men and applied for search warrants to the Chief Presidency Magistrate. Having obtained them officers were deputed to search 32 Muraripukur Road (garden), 15 Gopi Mohan Dutta's Lane, 48 Grey Street, 134 Harrison Road, 38/4 Raja Navakisen Street, 23 Scott's Lane, 4 Harrison Road, 30½ Harrison Road, Shibpur Engineering College.

Kept a station diary during the investigation under section 42 Police Act. Had also personal diaries. Made no record about the existence of this society. There is a confidential file where it was recorded. On 12th March came to know that the secret society was located in the garden. On 8th April suspected Hem Das as Barin came to see him. All arrests on 2nd May were

under section 64 Cr. P. C. They were all produced before the Commissioner of Police. On the 4th 14 men were taken to Mr. Birley. Aravinda and 6 others were placed before Mr. Thornhill Chief Presidency Magistrate on 5th. Complained to Mr. Thornhill on 1st May and was examined on 30th,—complained against Aravinda's gang of outlaws. On 1st May the case was not under Chapter VI. I. P. Code but under sections 126 Railway Act and sections 302, 109, 114 and 307, 109, 114, 143, 150, 157 I. P. C. From 14th April deputed officers to watch the houses. Recorded statements of some accused at detective office on 4th May before they were sent to the Magistrate. Barindra himself wrote the statement. Caused no enquiries to be made regarding the *Jugantar*, *Navasakti*, *Sandhya*, *Bande Mataram*, *New India* or the *Chatra Bhandar*.

P. W. 2. Shama Charan Manna.—planmaker. Proved plans of the different houses.

P. W. 3. L. Birley.—Offg. District Magistrate. Alipur. He wrote to the Commissioner of Police and accused were sent to him. Proved the confessions recorded by him and his order sheets. Narendra Gossain was tendered pardon and examined as witness. He was shot dead in the Alipur Jail on 31st. August, 1908.

He knew that accused made statements to Police before they were brought to him. Had seen those statements. Refused cross-examination by Saileu and Dindoyal and if others had applied he would have refused.

N.B. Application was made by the Crown to put in under sec. 10 and 33 Evidence Act the deposition of the approver taken down by Mr. Birley. The Judge held the accused had no opportunity in fact to cross-examine and Sec. 33 had no application. Sec. 10 did not apply as that Sec. contemplated a statement made by a conspirator while in the position of a conspirator and could not apply to the case of a person who had been tendered pardon and examined as a witness. The deposition was hence shut out.

P. W. 4. Jadunath Chakraborty.—Peshkar of the District Magistrate. He recorded in Bengali the confessions of Bibhuti Sarkar and Narendra Bukshi.

P. W. 5. Radha Roman Banerjee.—Surveyor. Made survey plans showing Calcutta and the Suburbs.

P. W. 6. Anantalal Bose.—Overseer, Maniktola. Holding 117 in Panchannagram Survey map is 32 Muraripukur Road.

P. W. 7. E. A. L. Kemp.—Deputy Superintendent of Police, Sylhet.

On 15th May searched the house of Kailash Chandra Sen, Sub-registrar Beniachong. Sushil Sen, Hem Sen and Birendra Sen were arrested. During search Exhibits 463-571 were found, also

777-779, 1805. The important finds were a packet containing black powder, a note book of cyphers and instructions for making dynamite and bombs—Ex. 479; Ex. 491 contained hieroglyphics and instructions for making explosives, a picture of Aravinda, wooden guns with bamboo barrels, an air gun, bamboo daggers, spear-heads, bamboo swords, a money order receipt showing sending of Rs. 8 to Barindra, bundle of letters.

P. W. 8. Kamini Kanta Das.—Sub-Inspector, Habiganj, deposed as last witness.

P. W. 9. Inspector J. L. Frizzoni.—Searched the garden at 32 Muraripukur Road and arrested 14 accused on 2nd May. Dug up a big zinc box and a big tank. Found bombs, dynamite, cartridges, chemicals, all sorts of instruments, rifles, revolvers, shells, moulds, handbooks on explosives, notebooks, picric acid, plans, *Jugantar* and other newspapers, copies of *Bartaman Rananiti* (modern art of war). Searched again on 6th, 7th, and 8th. The exhibits were marked by court as Ex. 1—281, 387-462, 864, 1235-1240.

Detailed list of articles were made at Park Street Thana on 4th, 5th and 6th May. The garden had no wall—was accessible from outsidcs.

P. W. 10. Shewprasad.—Took photo of a dead body at Mokama Railway Station on 2nd May, said to have been the body of Dinesh Chandra.

P. W. 11. Elliot Kaye, D. S. P. of Benares.—Searched the house of Subodh Chandra Mullik at Benares. Found some papers Ex. 1051-1058.

P. W. 12. S. I. Satish Chandra Roy.—Helped in the search of the garden on 2nd May. Was present at a meeting held in Federation Hall ground, to give a reception to Bopin Chandra Pal on coming out from prison. Sent a note Ex. 102.

On the 4th made the detailed list at Park Street Thana. The search witnesses were—Wazir a carter's sirdar, the other two were hackney carriage owners.

P. W. 13. N. R. Lee.—Subdivisional Officer, Garbetta, B. N. R. Made a survey of the line between Bankura and Kharagpur, and made a Report Ex. 93. Gave evidence about certain entries in the note books found during search corresponding with the features of the place and the railway bridges, culverts &c.

P. W. 14. Satish Chandra Banerjee, Inspector, C. I. D.—Watched Howrah Station, 4 Harrison Road and 23 Scott's Lane from 24th March to 8th April. From which date watched 38'4 Raja Naba Kissen Street. Saw Barindra coming out of 38'4 and going into the garden. On the 10th April followed Barindra, Indu Bhusan Rai and Narendra Gossain to Mankundu Railway Station. They

went towards Chandernagore, but mixed with a crowd and were lost sight of. Next morning saw Indu and Narendra take train at Chandernagore. Sarat Palit followed them to Sirampur. We searched for Barindra, could not find him, returned to Calcutta. On 20th April followed Upendra and Nirapada to 4 Harrison Road from the Garden. Krishnajiban was with them but he went away towards Bagmari. The two met and talked with Balkrishna H. Kane on the road. On the 21st April Nirapada and another came out from the garden, purchased chemicals from D. Waldie & Co. and went back to garden. On 23rd April Barindra came out of the garden and went to 15 Gopimohan Dutt's Lane. Upendra, Bibhuti, Kane and 23 others entered the house also. On 24th Barindra went from garden to 23 Scott's Lane, where Aravinda was living then. Abinash and Sailen were often seen there. On 25th after talking with Upendra, Barindra went from garden to 15 G. M. Dutt's Lane and thence to *Narasakti office*, 48 Grey Street and thence to Hem at 38 1/4 Raja N. K. Street. On 26th Police hired a house opposite No 15 and he watched from there. Ullaskar Dutt came in a hackney coach No. 494. Two steel or tin trunks and a canvas bag were brought out and he followed the carriage to 134 Harrison road. Dharani and Nagendra came out and took the boxes in. On 27th followed Ullaskar from there to Shibpur. On 2nd May searched Ullaskar's father's quarters at Engineering College, Shibpur. Identifies various accused whom he had seen at the various houses.

Got no orders to shadow Arabinda--only to watch his house. Did not know Ullaskar's name before his arrest. Kept no written note of what he had seen. Watched garden for six days only. There were occasions when he passed within a cubit of the accused. All his reports to superior officials were verbal.

P. W. 15. H. C. Woodburn.--District Magistrate Muzzafferpur. Heard sound of explosion on 30th April 1908. Found Mr. and Miss Kennedy wounded in Mr. Kingsford's house. Both died. Saw Khudiram Bose under arrest next day at the station. He made a statement there and again on 3rd May after seeing the dead body of Dineshchandra Roy. Khudiram was afterwards hanged.

P. W. 16. Abdul Noor, Inspector--Assisted Mr. Kemp in searching the house of Sushil Sen at Beniachong.

P. W. 17. S. I. A. H. M. Latipuddin--Assisted Mr. Kemp in the search.

P. W. 18. Richard Creagan--Superintendent of Police. Searched 48 Grey Street on 2nd May. Found Arabinda and his wife upstairs. Arrested Arabinda and in downstairs Sailendra and Abinash. A manuscript "Morality of Boycott". Ex. 283, letters, newspaper cuttings, accounts etc. were found, being Ex. 283-314, 1208-1209,

1275-1280. One of the letters found was from Tilak and another from Barindra about "sweets" being kept ready for contingency. On 8th June searched the house of Delabrata Bose. His sister threw some letters tied in a bundle from the terrace. We got them. We got letters and books Ex. 1885-1207. Arrested them all under Sec. 54 C. R. P. C.

Applied for transfer of the prisoners from Presidency Magistrate's Court to the Alipur Court on 5th May--43 accused and 4 others. The things were not taken to the Park Street Thana. He brought exhibits before Mr. Birley in bundles. He handcuffed Arabinda. Am surprised to find numbers on the documents that don't correspond to any number on my list. The only document he read was the one about the "sweets". Mr. Denham read it. They had a laugh over it.

P. W. 19. *J. P. Feeny, Deputy Commissioner of Police.*—Searched No. 15, Gopi Mohan Dutt's Lane on 2nd May. Arrested Nirapada Roy and Kanai Lal Dutt. Found Exhibits 373-386, 710-716, 1249-1251.

Inspector Madden brought the search-witness Edwards. There was only one witness. He came from Dacre's Lane.

P. W. 20. *C. F. Merriam, Superintendent of Police.*—Searched 38 1 Raja Nabakisen Street on 2nd May. Arrested Hem Chandra Das. Found Ex. 320-372, 717-734, 1132-1134. Arrested Provas Chandra De in June or July. He got an anonymous letter about an explosion in May at 37 College Street, the house of Lt. Col. Nandi. Went on 23rd June to search the house and arrested Indranath Nandy, found both his hands bandaged. Left hand was gone—only the stump was left. On search found revolvers, rifles, sword, papers, picture etc. Ex. 1135-1182.

Made no enquiry about explosion in Indra Nundy's house. There is a druggist's shop very near. Learnt that Indra met with accident by an iron safe falling on his hand. Col. Nundy was a military officer and I. M. S. Did not see any sign of an explosion in the house. It was clean.

P. W. 21. *S. I. Sarat K. Ghose*—Helped last witness in the searches. He did not know any of the search-witnesses or where they lived or their antecedents, kept the exhibits with him till 6th May arranging, sorting and marking them.

P. W. 22. *Griffith Bowen, Superintendent of Police.*—Searched 134 Harrison Road on 2nd May. Arrested Nagendra, Dharani, Asoke and 2 others. Bombs, revolvers, rifles, detonators, cartridges, chemicals &c. were found in 3 tin boxes and one cane basket and a canvas bag, Ex. 572-709.

P. W. 23. *Major J. A. Black, I. M. S.*

I have been attached to the Chemical Department nearly 5½ years, I am responsible for the Government testing of explosives.

Major Black.

On the 10th December 1907 certain articles were brought to me for chemical examination by Major Musprat Williams and Captain Turner. Major Williams is Chief Inspector of Explosives in India and Captain Turner, Inspector of Explosives. The things given to me were scrapings from a rail, taken at the spot where an attempt was said to have been made to derail the Lieutenant-Governor's train. I detected traces of picric acid. The chemical tests for picric acid are quite clear and unmistakeable. The two larger fragments consisted of iron and the 3 smaller of lead. The chemical name of picric acid is trinitrophenol. Phenol is carbolic acid, and picric acid is a derivative of phenol. It is usually prepared from phenol by the action of sulphuric and nitric acids on phenol. The result of action is a deposit of large crystals: they are crystals of picric acid. The crystals are purified by washing with water, and recrystallisation. The crystals are shining yellow crystals. They have a little taste and are poisonous. They melt at 122·5 centigrade. If heated carefully the crystals melt and vaporise: if heated rapidly they explode. They are slightly soluble in cold water: more soluble in hot water and readily soluble in certain reagents such as alcohol, ether and benzine. With careful handling there is no great danger in preparing picric acid but it requires careful handling. The crystals require careful handling after made. Lyddite used in shells is fused picric acid. Melinite also contains fused picric acid. Picric acid can be detonated by a detonator such as fulminate of mercury. The fused acid can be detonated by means of the crystalline picric acid. Potassium picrate and ammonium picrate are salts of picric acid: they are both explosives.

On 2nd May I went to 32, Muraripuknr Road, the Manicktola garden. I went with Mr. Plowden and Mr. Corbett. This (Ex. 738) was found in my presence at the garden. It was dug up from underground: it was taken out of a receptacle. It was given to me a few days afterwards by Mr. Denham or Mr. Corbett. I have read it carefully. It contains well thoughtout and valuable information about explosives.

On 20th January Mr. Haytor Duff brought me 2 pieces of metal and a piece of flattened lead piping about 4' long. The 2 pieces of metal consisted of wrought iron. This (975) is the piece of lead piping. The (975) when round could have been used as a conduit pipe for detonating an explosive. If one end of it were fixed in a mine and the other end passed over a rail, if fitted with a detonator it could have exploded the mine, on pressure by a train passing over it: if some explosive material were run through the pipe.

On April 28th I received certain articles as from Chander-

magore. There was a wooden box, given to me by Adjutant Dhruba Dass. This (shown) is the box. In it I found a tin case. This is it (shown). The handle was then attached to it. I examined the contents. I found the case filled with fused picric acid. In the mass of the picric acid was a small quantity of dark powder: it was a mixture of sulphide of lead, chlorate of potash, nitrate of potash and traces of picric acid. There was an opening at one side of the tin corresponding with a depression in the fused picric acid. I also found a small paper-tube, containing a cylindrical roll of charred paper. In the roll was a small quantity of dark powder. I examined it: it contained sulphide of lead, chlorate of potash, nitrate of potash and traces of picric acid. I considered the powder was intended to be used as a detonator: it is a powder readily ignited by friction or percussion. Here it is (1044/2). I subsequently experimented with some detonating powder said to have been found at 134, Harrison Road. I examined the ingredients. They were chlorate of potash, nitrate of potash, and sulphide of lead, and amorphous phosphorous which is also known as red phosphorous: no picric acid: the picric acid in the former case was evidently from the bomb. The presence of phosphorous makes the detonating powder liable to ignite on slight friction or percussion. In detonating mixtures sulphide of antimony is usually used, not sulphide of lead. This (Ex. 738) contains a large number of formulæ for chlorate mixtures. Nitrate of potassium is the same as nitre. It is an oxidising agent. It is one of the ingredients of ordinary black gunpowder. The book (738) contains recipes for nitrate mixtures. Red phosphorous is a highly inflammable substance.

On May 2nd I saw a man known as Barendra Kumar Ghose. He gave the name himself. In my presence he pointed out to the police various spots which were dug up. Things were found. I saw them unearthed. There were a few rifles, a number of revolvers, ammunition, dynamite—about $\frac{3}{4}$ of a bucket—gelignite, strong acids, picric acid and other chemicals, bomb shells. I know a book called Sanford's Nitro Explosives. It is one of the standard works on the subject. There were a number of plans: of places. They were MS. plans. (Shown Ex. XL 1-15) I believe these were they. They were unearthed. So far as I remember 3 or 4 copies of this (Ex. XXVIII) were unearthed. The books contain instructions as to the destruction of railway and bridges by explosives and give formulæ for calculating the requisite amount of explosives. I examined a small workshop in the garden. It was constructed of bamboos and matting. There were 2 fireplaces, one fitted with bellows. There were ashes in the fireplaces and a box of matches lying half empty quite close. (Shown Ex. 55.) I believe it to be the workshop, (XLII shown.)

That is the class of bellow that I saw. On 5th May I visited Park Street Station with Major Smallwood, Officiating Chief Inspector of Explosives, in connection with things found at the garden and Harrison Road. We unloaded a number of bombs. A certain number of them were live bombs; we had to unload them under water. It was more dangerous than any one but ourselves realised. They contained explosives, some of them. Internally some of them contained the mould in which they had been cast. They varied in size considerably. In my opinion the larger bombs were intended for street fighting or some such purpose and the smaller for assassination. The danger areas would differentiate between the two. (Shown Ex. 610.) We dealt with this on the 5th. It is an iron screw bomb. It contained picric acid and a number of iron spikes with pointed ends. These are the spikes (shows). The danger zone would be at least 30 or 40 yards and probably more if portions of the shell or spikes were carried as they probably would be. I mean a radius of 30 or 40 yards and probably more. (Shown Ex. 36.) I remember this: we partially unloaded it. We thought we had taken enough to make it harmless: we found later that it was far from harmless. We unloaded 9 shells I think the first day. We destroyed a certain amount of dynamite and a small quantity of picric acid which we considered to be in a dangerous condition, on the same day.

On 9th May I received 2 bottles, these are they (739, 740). They contained a portion of the contents of 2 bombs emptied by Major Smallwood and we on the 5th under water. We put the contents in the bottles on the 5th. I analysed the contents of both. They consisted of sand, charcoal and borax. They were evidently the moulds on which the bomb shells had been cast.

On May 18th I received certain things said to have come from the garden. Among them was this (387). The balls corresponded with the small home-made shells that we unloaded. (Shown 390.) At one end I saw a mass of molten metal, it consisted of copper, tin, iron, and borax. It was probably used to stir a crucible containing molten metals. This (391) is a chatty containing pitch. I believe there are some explosives which contain pitch. (Shown Ex. 392.) One contained a little earth, oil and resin: and the other, earth, oil, resin and a little sugar. The mixture was probably used for making moulds: sugar is a constituent of some explosives. This (Ex. 429) contains portions of a bomb, some metallic fragments of copper, zinc, tin and iron, a large piece of borax, a piece of chalk, a few small fragments of sealing wax and portions of the paper *Bande-Mataram* dated 13th July 1907 and a partially fused mass of metal.

On May 12th I received certain articles said to have been found at 15, Gopi Mohan Dutt's Lane. I examined them chemically.

This (710) contained spirits of wine methylated with cacutchonodrine. Cacutchonodrine is used for methylating purposes on account of its unpleasant odour. It is inflammable and would increase the inflammability of substances. This (712) is powdered resin. From 713, 714, 715: I formed the opinion that they were the debris left over if the operation of shell making were suddenly interrupted. They would reveal the same symptoms if the plant had suddenly been removed to another spot. On 14th May I was put in possession of articles said to have been found at 38/4, Raja Naba Kishen's Street. They contained nothing of the nature of an explosive.

On 27th May I received articles alleged to have been found at 134, Harrison Road. These (Magistrate's) 613/1-3 are 3 partly filled bottles of picric acid: labelled D. Waldie and Co. These (618/1-5) are 5 bottles of carbolic acid. These (619/1-2) are one full and one partly full bottle of glycerine. This (620) is a bottle of caustic soda. If used with ammonium chloride, ammonia gas is generated. Ammonia gas is used in the manufacture of ammonium picrate. This (621) is a bottle of caustic potash: the properties are similar to those of caustic soda. This (622/1-2) are 2 bottles of nitrate of potash: an ingredient of ordinary black gunpowder. This (624/6-2) are 2 bottles of ammonium chloride. I see labels on (622 and 624), C. J. Hewlett and Sons. This (Ex. 625) contains a rod or amorphous phosphorous. This (654) is a paper with a yellow stain on it. A portion was given to me for analysis: the stains consist of picric acid. This (665) consists of 5 packets containing powder. I analysed them.

On 8th June I received some articles said to have come from Sylhet: Among them was this (735). It contained a small wooden box, which contained a considerable quantity of powdered sulphide of lead; 2 small glass ink bottles containing sulphide of lead; 49 small iron rivets and 61 small pieces of iron punched out in riveting. The rivets and pieces of iron might be used as projectiles in bombs; a few French nails of iron; 10 balls of naphthaline; the iron-head of a hammer, and a small screw-driver; a small brass padlock; a few fragments of sulphur. Sulphur is combined with lead to form sulphide of lead: a few crystals of bichromate of potash, that enters into the composition of certain explosives; a few crystals of sulphate of copper; a round ball of wax, about the size of a cricket-ball—it might be used as a mould; a few pieces of bees-wax, sealing-wax, chalk, flint and India-rubber. This (736) was a powder, consisting of sulphide of lead, sulphur and pounded chillies. These would not be an explosive mixture. With the addition of chlorate of potash alone, or in conjunction with amorphous phosphorus, these might be converted into an explosive substance. (Shown Ex. 479). It

was not sent with these exhibits : I saw it subsequently. I see a mixture, described as a bomb : it contains chlorate of potash, antimony sulphide, sulphur, red pepper, and amorphous phosphorus, nitro-glycerine or water, proportionately. We have antimony sulphide in this formula, while in (736), we have lead sulphide : in other cases a similar substitution was made. We have sulphur in both and red pepper in both. Chlorate of potash and amorphous phosphorus could be added subsequently to the powder (479) to make an explosive : it would be the natural thing to do, because the ingredients in the powder are the safe ingredients, the others make them explosives. For storage purposes, it would be safer to keep the latter ingredients till wanted.

I have a report of 15th June, regarding articles received on 13th June from Inspector Radha Govinda Kundu, said to have come from Sil's Lodge. They were 8 pieces of tin, shot-iron and a piece of zinc. They are in thin packet (Magistrate's No. 1127). Tin and zinc are used in the manufacture of bomb-shells. I saw similar fragments produced from the Maniktola garden. (Shown Ex. 384). It contains 3 formulæ for preparing fulminate of mercury, picric acid and nitroglycerine. So far as I can see, the formulæ are chemically correct, and would produce those substances. (Shown Ex. 479). (Looks at formulæ). I can't attribute these formulæ to anything but the preparations of high explosives. I have heard of a stuff called "Forcite". It is an explosive. (Shown Ex. 491). (Looks at passage headed "Litho-fracture"). I can't attribute these to the manufacture of anything but high explosives. (Shown Ex. 504). Of the things in the list, the first 4 are used for preparation of explosives : strontium is used chiefly for coloured lights : the other item suggests to me rather the making of fire-works or matches. I believe, benzene is used for making matches. The first 4 items are used for making fire-works or matches. (Shown Ex. 384, entry on 4th sheet). (Shown 667, 3rd page of writing). It is evidently a formula for mould-making : for preparation of bombs or shells. The oil mentioned is castor-oil. (Shown Magistrate's No. 1210, 12th and 13th sheets). The first is the formula for a detonating mixture, sulphate is probably a mistake for sulphide. The next is also a detonating mixture. The next are the substances required for making fulminate of mercury. The next is labelled "Abel's fuse," i.e., a fuse for conducting a flame : I don't know this formula. The ordinary method of explosion by means of electricity is by means of a platinum-wire heated to redness by electric currents. All the above would be available for explosion for shells and bombs. Abel—is an English expert on explosives.

I gave evidence in the High Court case and saw a collection of arms and ammunition there. Taking all the articles that I have

seen from all the places I should take the cost to be from 5,000 to 6,000. I consider there are indications of instruction in the art of manufacturing explosives.

P. W. 24. Insp. W. K. D. Hamilton—Assisted Mr. Bowen in the search of No. 134 Harrison Road.

P. W. 25. Upendra Nalk Majumdar.—Present and witnessed the search at No. 15 Gopimohun Dutt's Lane.

P. W. 26. Inspector Kedareswar Chakrabarty—On 5th May searched the house of Narendranath Gossain at Serampur and arrested him. Found Ex. 781-790 and 800-802. On 10th May arrested Hrishikesh Kanjilal at his house at Serampur. Found Ex. 192-199.

I took the Exhibits and accused Hrishikesh to Ramsodoy's house, Amherst Street. He shewed a desire to confess on the way, and we took it down at night. Next day he took us to Goabagan and Bhowanipur. Nothing important found.

P. W. 27. S. I. A. Azzanou.—Chandpur. I searched the workshop of Surendra and Satish Ganguly. Found Ex. 111/-4 and 223.

P. W. 28. Inspector M. J. Lyons.—Searched the house of Bijoy Bhattachaya 10/1 Rani Sankary's Lane, Bhowanipur on 1st and 2nd July and arrested Bejoy. Found Ex. 1210-1219, 1226, 1230, 1231 and 1233.

Bijoy was then at school when I went to search on 1st July. The formulæ for explosives was in Ex. 1210. I did not initial the entry nor entered it in my list. On the 2nd July I searched the whole house. We found incriminating paper, and arrested Bijoy.

P. W. 29. S. I. Kedarnath Bhattacharya—Searched the house of Kunjalal Shah at Kustia on 28th May. Found Ex. 897-904.

P. W. 30. Inspector Lalmohon Guha.—In December 1907 was enquiring into the Naraingarh Train wrecking case. I found there newspapers in a burrow pit, also piping Ex. 975, 1010-12, 1018-1021. Searched the house of Sutteyendranath Bose in Midnapur on 3rd May 1908. Found gun, kukris, and lathis. He was prosecuted under the Arms Act and sentenced to two months. He has since been hanged for murder of the approver. Found also Ex. 1022-1029, 1031-1041.

P. W. 31. Douglas Mac Dowall, Sergeant, Ry. Police.—I took the piping Ex. 975 to Major Black.

P. W. 32. Inspector Braja Rakhal Sanyal.—Searched the house of Indra Dhusan Roy on 23rd May in Khulna, found Ex. 747, 750-755.

P. W. 33. Ramesh Chandra Chondhry.—Keeper of a Press. Sells books and pictures, knew Sateyndra Bose and Provas Dev alias.

Manik Lal and sent them books and pictures. Provas asked him to print Ex. 1129. Hem Das came to Calcutta to learn to make matches.

P. W. 34. Kaminimohon Bhattacharya—There was a riot in Jamalpur in April 1907. A Mahomedan was killed. Four Calcutta volunteers including Indra Nandy and Sishir Ghose were arrested on 27th April. Some Hindu idols were outraged and Hindus alleged they were oppressed by Mahomedans. Police did not take sides with Mahomedans. I don't know if volunteers went with Babus Krishna Kumar Mittr and Surendranath Banerjea to attend conferences at Maimensingh. Volunteers did not act in opposition to the local authorities.

P. W. 35. Inspector P. C. Lahiry. It is part of my official duty to make myself acquainted with declarations under the Press Act XXV of 1876. Declarations are made in triplicate: one goes to the police, one to the High Court and one to the Presidency Magistrate. I have made myself conversant with the declarations of *Sandhya*, *Jugantar*, *Bande Mataram* and *Narasakti*. This (979) is the first declaration about the *Sandhya*. Brahma Baudhab Upadhyay alias Bhowani Charan Banerji declared himself printer and publisher of the *Sandhya*, as printed at 193, Cornwallis Street and published at 20, Cornwallis Street. On 19th February 1907, Hari Charan Dass declared himself printer and publisher at 193, Cornwallis Street (980). On 9th July he made a declaration of printing and publishing at 53, Corporation Street, this is the declaration (981). This (982) is a declaration by the same man as printer and publisher at 23, Sib Narain Dass' Lane, on 15th July 1907. On 26th October he declared himself to have ceased to be printer and publisher (marked Ex. 986). On 28th October 1907 Manabindra Nath Chatterji declared himself to be printer and publisher at 23, Sib Narain Dass' Lane (Ex. 985). The next declaration was on 20th February 1908, by Jogendra Nath Sen, as printer and publisher (Ex. 988). On 30th June 1908, Jogendra Nath Sen alias Lall Bihari Sen, declared himself printer and publisher at 48/1/9, Corporation Street. I know a newspaper called *Kavali*. It was the bi-weekly edition of the *Sandhya*. This (Ex. 1402) is a declaration about it of 22nd November 1907 by Manabindra Nath Chatterji, as printer and publisher at 23, Sib Narain Dass' Lane.

This (907) is the first declaration of the *Jugantar*, by Bhupendra Nath Dutt. The next (909) was by him on 28th May 1906, at 27, Kanai Lal Dhar's Lane. The next (911) was by him as printer and publisher at 41, Champatola 1st Lane. The next (913) was a declaration by Harish Chander Ghose, as printer and publisher, at the same place. The next was by him on

9th July 1907, for printing at 176/3, Bow Bazar, and publishing at 28/1, Mirzapur Street (Marked Ex. 915). The next was on 30th July 1907, by Basanta Kumar Bhattacharji (marked 934). Then there was a declaration of cessation on 5th October 1907, by Basanta (marked 936). The next was a declaration by Baikanta Chander Acharjya, as publisher at 28/1, Mirzapur Street (marked 937). The next was on 28th January 1908, by Bibhuti Bhushan Rai, at 5, Ram Dhan Mitter's Lane (Ex. 939). On 19th February he declared his cessation as printer and publisher (marked Ex. 940). I know Phanindra Nath Mitter. He declared himself printer and publisher in March 1908. Phanindra Nath Mitter was convicted both in the Magistrate's Court and again in another case in the High Court. The place of printing and publishing was 68, Maniktola. After his conviction I do not think there was a subsequent declaration. I know a man called Birendra Nath Banerji, who declared himself as printer after Phanindra's arrest, at 3, Ram Mohan Shaha's Lane.

The first declaration for the *Bande Mataram* was by Khettra Mohan Singh on 6th August 1906 (Ex. 944). The next was by Amar Prasad Mukherji, at 193, Cornwallis Street (Ex. 945). After that it became a company. The next declaration was by the same man, at 2/1, Creek Row, on 22nd October 1906 (Ex. 946). This (948) is the next by Purna Chandra Sarkar. This (949) is by Ram Chander Banerji. After that Apurba Krishna Bose declared himself as printer and publisher on 11th April 1907, at 2/1, Creek Row (950 c). On 20th September 1907, Apurba made a declaration of cessation (951). After him Bistu Pada Sen made a declaration as printer and publisher at 2/1. A case is now pending against him.

This (942 d) is a declaration for the *Narasakti* by Maumohan Ghosh on 20th May 1907, at 48, Grev Street. This (943) is a declaration by Bihari Lall Ray for the same place.

I know a press called the Keshab Printing Works. This (1405) is a declaration by Keshab Chandra Sen Gupta, on 25th March 1904, as having printing works at 7, Santi Ghose's Lane. This (1403) is a declaration for the Kamala Press, by Bisseswar Prassanna Sen, at 36, Banamali Sarkar's Street, on 13th February 1906. This (984) is a declaration by Surendra Nath Sinha for a press at 23, Sib Narain Dass's Lane, for a press formerly known as Saraswati Press, dated 6th September 1907. These (Exs. 908, 910, 912, 914) are declarations for the Sadhana Printing Works. This (Ex. 935) is a declaration for the Sumati Printing Works: this (Ex. 1401) is another for the same press. This (1404) is a declaration for the Saraswati Press. This (947) is the only declaration for the *Bande Mataram* Press. I know a press called the Classic Press.

It was first situated at 53, Corporation Street, and was then removed to 49/3, Corporation Street—(then says) 48/1/9. It is there now.

Bhupendra Nath Dutt was prosecuted under section 124A, I. P. C., and convicted. The prosecution was in consequence of a search by me. To arrest him I went to 176/3, Bow Bazar Street, in July 1907: in the first week in July. There I saw Abinash, Sailendra Nath Bose, Barendra Kumar Ghose and Sudhir of the present accused. (Identifies them.) At that time I did not know Barendra by name. I know Sailendra and Abinash by name before, and Sudhir gave me his name there. I did not ascertain Barendra's name that day. I did not find Bhupendra that day. I arrested him next day at 41, Champatola 1st Lane. When I arrested Bhupendra, Abinash, Upendra, Bibhuti and Sailendra, of the present accused were there. (Identifies them.) Bhupendra was convicted on 24th July 1907, and sentenced to one year's rigorous imprisonment (record marked 928). Upen, Abinash and Sailendra attended the trial frequently, Upen and Abinash daily. The Magistrate ordered confiscation of the press. Abinash applied to the High Court and the confiscation was set aside. The next prosecution of the *Jugantar* was against Abinash Chandra Bhattacharji and Basanta Kumar Bhattacharji, under section 124A. Basanta was convicted by Mr. Kingsford and sentenced to 2 years and a fine of Rs. 1,000, and in default 6 months, on 2nd September 1907, and Abinash was acquitted (record marked 933). The next case was against Baikranta Nath Acharjya. The complaint was on 23rd December 1907. On 16th January he was convicted by Mr. Kingsford and sentenced to 2 years and a fine of Rs. 1,000, in default 6 months under section 124A (record marked 938). There was a complaint against Phanindra Nath Mitter on 11th April last, and he was convicted on 26th May by Mr. Thornhill and sentenced to one year and 11 months, and a fine of Rs. 1,000, in default 6 months (record marked 941). During the trial Phanindra was on bail. Nikhileswar Rai, the present accused, stood surety for him (identifies him). Phanindra was again prosecuted on a similar charge with reference to an article appearing in the *Jugantar*, while he was on bail. He was sentenced at the High Court Sessions to 4 years: in the August Sessions. Birendra was also convicted under section 124A, by Mr. Thornhill. I do not know what his sentence was. Since then there has been no declared printer or publisher.

In August 1907, Hari Charan Dass, Brahma Bandhab Upadhyay and Saroda Charan Sen of the *Sandhya* were prosecuted under section 124A. Saroda was manager. Brahma Bandhab died in hospital: the other 2 tendered an apology and the case was withdrawn. This was in October 1907. Manabindra Nath Chatterji

was convicted on 19th February 1908, under section 124A, by Mr. Kingsford, and sentenced to 2 years, and a fine of Rs. 1,000 or 6 months in default (record marked 987).

On 30th July 1907 a complaint was lodged against Arabinda as Editor, Hemendra Prosad Bagechi as manager, and Apurba Kumar Bose as printer and publisher. Arabinda and Hemendra were acquitted. Apurba was convicted on 23rd September 1907, and sentenced to 3 months' rigorous imprisonment (record marked Ex. 950). Apurba appealed unsuccessfully. Bistu Pada Sen was also prosecuted. The case is still pending, the man is ill.

Manomohan Ghose of the *Narasakti* was prosecuted on the 14th January 1908, and convicted on 19th February 1908, and sentenced to 6 months and a fine of Rs. 1,000 in default 4 months (record marked 942).

I know Keshab Chandra Gupta, Srimanta Lall Rai Chaudhuri, Basudeb Bhattacharji. Keshab was proprietor of a Press called Keshab Printing Works at 7, Santiram Ghose's Lane, Srimanta Lall was printer of the press: Basudeb was Sub-editor of *Sandhya* and author of the pamphlet *Sonar Bangla*. They were prosecuted under the Press Act in connection with 3 matters, printing and publishing without declaration, the pamphlet *Sonar Bangla*, *Sandhya* and *Jugantar*. There were 2 prosecutions: one in which Basudeb was convicted and the one in which the others were tried. (Record of Keshab's case marked 926). There were three charges and he was fined Rs. 450(1). (Record of Basudeb and Srimanta marked 927) Basudeb was fined Rs. 200 in default 4 months and Srimanta Rs. 15 in default one month. They were not tried together. Srimanta was convicted on 3rd July and Basudeb on 13th July. I remember a Government notification to editors warning them against writing seditious articles. I know the notification was sent to the papers *Sandhya*, *Narasakti*, *Bandh Mataram* and *Jugantar*.

I made a number of searches. In June 1907 I searched the Keshab Printing Works. When newspapers come into existence it is part of my business to enquire who are responsible for them. I did this in the case of the *Jugantar*. I had an interview with Bhupendra Nath Dutt early in 1907, at 27, Kanhai Lall Dhar's Lane. Abinash was present at the time. Harish Chandra Ghose and many students and boys were also present. I asked Bhupendra who were the responsible people for the *Jugantar*, editor, printer and publisher, and proprietor. He said "I am everything." Abinash was sitting there and took no exception to the statement. The search in June 1907 was at 7, Santi Ram Ghose's Lane, in connection with the pamphlet *Sonar Bangla*. I had a search-warrant from the Chief Presidency Magistrate. I had witnesses and made a search-list. The witnesses were present at the search, I

saw Keshab Chander at the time of the search. Dindoyal Bose was present at the search. (Identifies him.) I found some printed impressions of the *Jugantar* and *Narasukti*; and type set up ready for printing the *Jugantar*. Percy took an imprint of the type that was set up, in my presence. I also found copies of the *Jugantar* of 6th June. The impression by Percy and other things taken possession of were signed by Dindoyal Bose as witness. This is Dindoyal's signature. (Shown on paper in 926/c). It is a proof of the *Sonar Bangla*. These papers are proofs of the *Sonar Bangla* that we found at the search. I found this counterfoil book there, containing counterfoil for 1,000 copies of *Sonar Bangla*, signed by "Basudeb Bhattacharji, assistant editor, *Sandhya*, 193, Cornwallis Street."—926/d.

On 1st July 1907 I searched 41, Champatola 1st Lane: Mr. Ellis, Superintendent of Police, was with me. I found Bhupendra Nath Dutt, Abinash Chandra Bhattacharji and Sailendra Kumar Bose there. Sailendra was sub-manager of the *Jugantar*. Bibhuti Bhusan Sarkar and Sudhir Kumar Sarkar were there; afterwards Upendra Nath Banerji came. When I was examined by Mr. Birley I did not know Bibhuti and Sudhir by name, I pointed them out: I had a conversation with Bhupendra. At that time Sailendra and Abinash were present. I asked them what they were as regards *Jugantar*. Bhupendra said he was editor and Abinash was manager and Sailendra was sub-manager. Abinash did not say anything: he did not contradict. Sailendra said he was sub-manager of the *Jugantar*. There was a press then downstairs. I made a search. I found a proof sheet of the *Bartaman Rananiti* and the manuscript of it. This is the M.S. (Ex. 929). This (930) is the proof of it. I found some proof sheet of the *Mukti Kon Pathe*. (Ex. 931.) I found this account book (932). It contains the names of Abinash, Sailendra and Bibhuti. These (929, 930) came out of the bundle—also this (931). At the same search I also found this (1271) and this (1272) and this (1273) account book of *Mukti Kon Pathe*. This (1273) is initialled by me. The others (1271 & 1272) are not (sees 933/c). The two (books 1271 and 1272) bear the search-list number.

On 30th July 1907, I searched 2-1, Creek Row. This (950c) is the search-list. It was signed by me, Ellis, Merriman and search-witnesses. At that search I found Hemendra Prosad Bagchi, Sailendra Kumar Ghose, Upendra Nath Banerji, Shamsundar Chakrabarti, and Binoy Babu and many others. Upendra is the accused whom I identified yesterday. Sailendra was managing director of the *Bande Mataram*, Printers' Limited: he was at one time in the Home Civil Service. Sham Sundar was one of the editors of the *Bande Mataram*. Sham Sundar has a brother, Girja Sundar. Girja Sundar was at that time a canvasser for subscribers:

he is now manager, and is at this time appealing to the High Court against the confiscation of the press.

In August 1907, I searched 28/1, Mirzapur Street, on 7th August, Mr. Ellis and Inspector Percy were with me. I found the accused Sailendra there. On that day there had been a boycott meeting in College Square, to celebrate the anniversary of the boycott. A procession passed going towards College Square, while I was in 28/1 Mirzapur Street. Sailen called to them. They stopped. Percy told them to move on, they refused and one of the men Jotish Chander Ray, assisted by Sailendra, assaulted Percy. Sailendra was prosecuted and got 3 months from Mr. Kingsford. On account of the *navamari*, the search-witnesses ran away, it was not even properly signed and could not have been properly written. On the same day I searched 23, Sib Narain Dass' Lane. At the time it was the Saraswat Press, the Sandhya office and the *Jugantar* was being printed there. With me were Aldridge, Ellis, Elliot, Faria, Percy and others. We searched that before 28/1, Mirzapur Street. At No. 23, I found Saroda Charan Sen, manager of the *Sandhya*, and Birendra Kumar Ray, the sub-manager. None of the present accused were there.

On 24th December 1907, I searched 5, Ram Dhan Mitter's Lane, in connection with the case against Baikanta Nath Acherjee in connection with the *Jugantar*. I made a search list. I found Bibhuti Bhusan Rai there. He is not one of the accused. It is the man who on January 28th, 1908, declared himself printer and publisher of the *Jugantar*. I found 13 proof sheets of articles (938/d). Also this book of addresses of subscribers (938/c). Also these (938/g) proofs of addresses, and this (938/f) also this (994), an account of books sold. In the book I found a money order coupon (marked 994/1). I found a slip purporting to be the account of Nikhileswar Ray Mallick 9-12-'07 (995). I found this (996) list of names and addresses there.

On 16th January 1908 I searched 48, Grey Street, the *Navasakti* office : Ellis, Gupta, Percy were with me. It was in connection with Manamohan Ghose's case. This is the search list (942/c). Manaranjan Guha was living there at the time. He has mica mines and was proprietor of the *Navasakti*. He has sons, Satyaranjan, Chittaranjan and another. Chittaranjan declared himself proprietor of the *Navasakti* Press. I found Manamohan Ghose there, also Joti Lal Mukherji, one of the editorial staff, and Debabrata Bose, the accused (identifies him). Probbash Chunder Deb was also present (identifies him).

I saw Probbash Deb at the search of 23, Sib Narain Dass' lane. I saw him on two occasions, in connection with the 2 searches : August 1907 and January 1908. The Ardhodaya Joge was in the beginning of February this year. When I searched the office in

January he was enlisting volunteers for the Ardhodaya Mela. At the search in August 1907 he was sitting with Leakat Hossain and some boys from Barisal. On that day the *Jugantar* was being printed when I went there. When I searched in January it was not being printed there. On that occasion Probbhash had some burns on his fingers and cheek. His hands were not bandaged.

I searched 68, Maniktola Street in connection with Phanindra Nath's case, on 11th April. I saw Probbhash there and Nikhileswar; I think I saw Bibhuti Bhushan Ray, not the accused. Nikhileswar is the accused. I got information from Nikhileswar about the press. He told me he had bought the Sadhana Press from Abinash for 1,400 and had changed the name to Sumati Printing Works. This is my search list (941'c). The Sumati press was in the place I was searching.

On 10th May I went to 2-1 Creek Row, the *Bande Mataram* office. With me were Merriman, Percy and other officers. I searched there. I made a search list, it is filed in the case of Bistu Pada Sen. The Anusilan Samiti is a society at 49, Cornwallis Street; a political society. I found this (Ex. 1067) at 2-1 Creek Row.

2-1, Creek Row belongs to Subodh Chandra Mullik. It is just behind his house, 12, Wellington Square. It is in a lane and is on the other side of it. There is a blind lane running at the back and after 2 or 3 huts is No. 2-1, Creek Row. The lane is on the north of No. 12: No. 2-1 would be to the North-east. I know *Bande Mataram* became a joint stock company in October 1906. Arabinda Ghose was a shareholder and director, and Chairman at the 1st Annual Meeting. The registered office of the company is 2-1, Creek Row.

The printers' declaration that I put in yesterday will show when the paper *Bande Mataram* started. Syam Sundar Chakrabarti joined in September or October 1906, I used to see him. His brother Girija subsequently became connected with it. I know Kartik Chandra Nan. He owned Saraswat Press at 193, Cornwallis Street. He made a declaration on 24th November 1905. (Declaration marked Ex. 1441.) The first declaration of the Classic Press was in 1902 or 1903. This is the declaration of transfer from 55, Corporation Street to 48-1-9, Corporation Street (marked Ex. 1442).

This is the declaration of Kartik Chandra Nan for Saraswati Press (Ex. 1441). This is the declaration of Nikanja Lal Dutt for the same press (Ex. 1443). This is a declaration of Bistu Pada Sen for the *Bande Mataram* Paper (1444). After Phanindra Nath, Birendra Nath Banerji made a declaration on 21st May 1908 as printer and publisher of the *Jugantar* (1445). This is the

declaration of Phanindra Nath Mitter for the *Jugantar* (1446). In the beginning of April the Sumati Printing Works was transferred to 68, Maniktola Street, and that is why I searched No. 68 in Phanindra's case.

I searched the house of Tara Nath Rai Chaudhuri at 4, Raja's lane on 19th May. I searched his house in consequence of information. At that time he was manager of the *Jugantar*. A warrant is out against him and he is proclaimed as an absconding offender, under the Arms Act. In that search I found a loaded revolver, 5 cartridges in a pouch, two 6-chambered revolvers, a dagger marked A. I. K. K., a kukri, two other daggers, a tin box with 25 cartridges, 4 boxes of 22 cartridges, 2 boxes of cartridges, and other cartridges, revolver and rifle, and shot cartridges, in all some 1,280 cartridges as detailed in the search list, and implements, a railway carriage key, a wood cutter (marked 1447 in one lot). Tara Nath comes from Lamchar in Noakhali District.

On 23rd June 1908 I searched 68, Maniktola Street on the occasion when we arrested Nikhileswar in this case. I had search-witnesses and police officers, Mr. Creagan, Inspector Mullik and other officers. This is the search-list (Ex. 117). It was written by Mullick and signed by me. I found accused Nikhileswar there. Probhash, the accused, was also there. I found things and entered them in the search-list :

At searches of *Jugantar* after its removal to Maniktola Street I found Probhash and Nikhileswar present on both occasions. I searched the *Sandhya* 3 times. I found Probhash there twice.

The signboard at 75, Cornwallis Street of the *Jugantar* had the *Jugantar* crest and the words *Jugantar Karyalaya*.

Jogendra Nath Sen who declared himself printer and publisher of the *Sandhya* was prosecuted for giving a false name. He put in a fresh declaration giving his name as Lall Bihari Sen and was warned and discharged.

The *Sandhya* is now being printed at 48-1-9, Corporation Street, at the Classic Press.

I remember the accused Barindra Kumar Ghose writing a statement on the 3rd May. He wrote it at the C. I. D. office at 25, Royd Street. I saw him write it. The whole was in his writing. This is the statement. (Mr. Norton wants to put it in as a specimen of his writing. It is objected it cannot be put in at all. Admitted as a specimen of writing. Marked 1448.)

I have not taken any part in the investigation of this case. I have assisted by producing these things, and giving notes, of previous searches and enquiries : So far as I know, Mr. Denham was the head officer investigating. Subsequent to arrest it was Mr.

Denham, before arrest I do not know, I can only surmise. I cannot give an idea who was the chief investigating officer before arrest. There were different officers at different stages: Soshi Bhushan De, Purna Biswas and latterly Ram Sadai Mukherjee. I know them all.

P. W. 36. *W. H. Corinsh, D. S. P.*—Was present at the Midnapur Conference 7th, 8th Dec. 1907. Aravinda was present. Saw volunteers with lathies including Satyendra Bose as captain. K. B. Dutt was chairman, when he wanted to speak there was great uproar as people wanted to know if he would speak on *Siraj*. Aravinda though appealed to, did not calm the extremists.

P. W. 37. *Nursing Bose*. - Clerk, D. Waldie & Co. on 21st April 1908, sold Sulphuric Acid in bottle Ex. 435. Ex. 625 is their label.

P. W. 38. *Inspector Binode Gupta*.—Higginbotham was shot at Khustia on 4th March. I investigated the case. I got Ex. 847-849.

P. W. 39. *Sashi Bhushan Adhikary*—Head master, Bhadreswar School. Upendra Banerjee and Hrishikesh were sometime teachers there in 1905-1906. Ex. 76 and 76 have resemblance to Upendra's writing.

P. W. 40. *Hari Charan Chakrabarty* - Teacher in Bhadreswar School. Upendra and Hrishikesh were teachers there.

P. W. 41. *Sambhu Nath Dey*. Clerk, Bengal Chemical and Pharmaceutical Works. Proves Ex. 804 to which 504 is the reply. Ex. 431, 432 and 617 2 are labels of our Firm.

P. W. 42. *Rudha Gecinda Kundu, Insp. C.I.D.* Searched Sil's Lodge Deoghar on 28th May. It is in an isolated place. Found Ex. 767--777 and 1127. Made enquiries about Ex. 778 and 779. I got 780.1-5 from Post Master there. On 5th June went to Giridi and examined Attendance Register of the National School where Narendra Buxi and Krishna Jibon were students. I got revolver Ex. 868 from the Court Inspector of Bankura, on 12th July. The two students left the School on 11th April 1908. For 15 days after 2nd. May was engaged in examining the documents in Park Street Thana.

P. W. 43. *Narendra Nath Dutt*.—Clerk, B. K. Pal & Co. Received letter Ex. 803 on 2nd May. 505 is our reply. Ex. 777 is label of C. J. Hewlett, chemists.

P. W. 44. *Hiralal*. Post Master of Rohini. Knows Sudhir Kumar Sarkar who used to come for letters addressed to Upendra Banerjee, Sailendra Ghosh, V. V. Lala. S. Ghose sent Rs. 15 by M. O. to Upendra in Calcutta—Ex. 1007. Sailendra Bose also came for letters.

P. W. 45. Sivanandan Prosad.—Sub Post Master. Proves M. O. receipt and parcel notice Ex. 865, 866.

P. W. 46. Podu Tewari.—Post Man. Delivered letters in Arabinda's name to Raj Narain Bose's house in Deoghar. Proves. Ex. 778, 905-A.

P. W. 47. Tarini Rout.—Post Man. Many Bengalis lived in Sil's Lodge.—Profulla Chaki, Sudhir Sarkar, Upendra Banerjea, Prokas Bose.

P. W. 48. Gopal Kahar.—Railway gateman at the crossing near Sil's Lodge. Some Bengalis lived at Sil's Lodge of which he had the key. He did not see the Babus.

P. W. 49. Nanda Kisore Roy.—Present at the search of Sil's Lodge.

P. W. 50. Manik Lall Dutt.—Sattayendra Bose was manager of Midnapur Chatra Bhandar. Nirmal (Nirapado) used to sell things there. I lent Rs. 580 to Satayendra for cloth business. Ex. 1030 is the document.

P. W. 51. Sirajuddin.—Present at the search of 80 College Street. Ex. 829-831 and 838 were found.

P. W. 52. Insp. A. Percy.—On 2nd. May searched 30 2 Harrison Road. Found 760-761, 764 and 1162. I took some photos of the Garden Ex. 50-55, also of 134 Harrison Road Ex. 34, 35. Ex. 36 is photo of a bomb.

P. W. 53. Insp. H. W. Major.—Searched Proyas De's house at 52 Meehna Bazar Street and found 5 pictures 1241—1245.

P. W. 54. Insp. J. M. Adani.—Present at search of 15 Gopi Mohan Dutta's Lane on 2nd May. In 373 4, 384, 384/1, 2 were found there. I got from Inspector Gupta and made over to Major Black Ex. 710, 712, 713,—716.

P. W. 55. Behary Lall Chakrabarty.—Proprietor of the Classic Press. Printed *New India* for 3 years, *Sandhya* for 2 days as its machine was out of order, Proves Ex. 1458—1460. I took over charge of *Sandhya* from 1st July. Printed *Bande Mataram* for the first twelve days.

P. W. 56. J. G. Jordan.—Police Surgeon. Examined Indra Nath Nundy on 23rd. June 1908. Left hand near the wrist missing. Hand was carefully dressed—perhaps removed in consequence of an explosion. Other fingers were badly injured and portions of arms. Bluish black small spots discovered in chest, leg etc.

P. W. 57. Tripura Charan Mookerjee D. S. P.—On 3rd. July 1908 searched the house of Nikhileswar Rai at Damrai in Dacca. He was not present. Found Ex. 1362-1378.

P. W. 58. Insp. Nagesh Chandra Mookerji.—In Feb. 1906 there was an Agricultural Exhibition in Midnapur. "Bande Mataram" leaflet were circulated by Khudiram Bose. I arrested him. Chandra Kanta Chakraborty was there. Volunteers paraded the streets and propagated Swadeshi. Aravinda visited Midnapur on 7th and 8th Dec. 1907. Sattyendra, Khudiram etc., visited him. Great noise on 7th at the conference meeting. The Extremists held a separate conference on the 8th. I searched the house of Purna Chandra Sen at Tamluq on 2nd June. Found Ex. 139 and 840.

P. W. 59. Bama Charan Sen.—Was Manager of *Navasakti* at 48 Grey Street from Baisak 1314 for one year till it ceased. Two years before that was Manager of *New India* for a year. Bepin Ch. Pal was Editor, Debabrata was sometime sub-editor. 5/6 days before *Navasakti* (daily) ceased Abinash Bhattacharya came with a letter to take charge of the Press to bring out *Navasakti* as weekly. He said he gave up connection with *Jugantar* as he did not sympathise with its writings. Ex 314/1-4 and 315/1-6 are account books. Tara Nath Rai was a clerk. Debabrata had a religious turn of mind. He never talked politics. There was no connection between *Navasakti* and the *Sandhya* or the *Jugantar*, the *Bande Mataram* or the *New India* as their writings were not approved. Provash De used to write in the *Navasakti*.

P. W. 60. Debendra Nath Sil.—Owner of Sil's lodge in Deoghar. Khudu dai took lease and she sublet to others.

P. W. 61. Bhawani Nath Nundy.—Offg. D. S. P. on 23rd, May I searched Bejoy Nag's house in Khulna. Ex. 741-744 and 746 found there.

P. W. 62. Chuni Dass.—Coachman. He drove 2 men from Chatra to French Chandernagore on last Dewali night at 8 p.m. One was Rishi Babu. Could not identify the other. They came at 2 a.m.

P. W. 63. Insp. Jogendra Mookerjee.—Last witness pointed to him the places where he drove his carriage. Ex 88 is note of proceedings of a meeting held to honour Aravinda and Bepin Pal at Uttarpara.

P. W. 64. Prasanna Kumar Ghosh.—Sub-Inspector of Schools. Sishir and Sudhir were in the 2nd Class in Khulna Zilla School. They left together in Jan. 1907 as they were defaulters.

P. W. 65. Hari Nath Roy.—Court Inspector Bankura, Id. Ex. 868.

P. W. 66. S. I. Sachindra K. Mullik.—Assisted in the searches of Sudhir K. Sarkar's house at Khulna and Indu Bhuson Rai's house. From Sudhir's house Ex. 823-829 were found.

P. W. 67. Insp. Ram Gopal Ghosh.—Searched the house of Birendra Nath Ghosh at Sagardari on 11th. May. Ex. 884-887 and 890 and 894 were found.

P. W. 68. Surath Chakraborty.—Clerk, Telegraph Dept. Produces telegrams Ex. 1379—1399.

P. W. 69. Chandi Charan Saha.—Owner in 1906 of 41 Champatala 1st Lane. Jugantar office was there then. Abinash Bhattacharya paid rent. Agreement was in the name of Harish Ghosh.

P. W. 70. Anukul Ghose.—Kept last witness' account books. He used to go and realise rent.

P. W. 71. Radharomon Bose.—Servant of P. W. 69. Don't know Abinash.

P. W. 72. Sarat Chandra Ghosh.—Our firm manufacture iron tanks. On Chait 17th 1314 an order was booked for an iron tank $4' \times 1\frac{1}{2}' \times 1\frac{1}{2}'$. A man came for the tank. Bibhuti Bhushon resembles that man.

P. W. 73. Saroda Prosad Das.—Ex. 861 is order for the tank in my book. Tank was like Ex. IV. Don't remember who gave the order.

P. W. 74. S. I. Sukumar Banerjea.—Ex. 735 and 736 are the two packets which S. I. Latifuddin made over to Mr. Denham on 20-5-08 as found in Sylhet and which I made over to Chemical examiner in June.

P. W. 75. Sailendra Sarkar.—Clerk, Simla Post Office. In may 1908 after arrest of Aravinda Ghosh Government sent an order to intercept all letters to 48 Grey Street. Ex. 1290—1296 are the letters.

P. W. 76. Phani Bhushan Roy—Sub Post Master, Manicktola M. O. 992 shews Rs. 20 issued from Manicktola to Sishir Ghose at Bombay. 231/1 is the acknowledgment. Money appears to have been paid on 27th April.

P. W. 77. Kisory Lal Das Gupta—Clerk, General Post Office. In Dec. 1907 was clerk in Baghbazar Post Office. 15, Gopi Mohan Dutt Lane in that jurisdiction, so was Murari-pukur Road. M. O. 3683 was for 10 issued from Burdwan and paid to Barindra Ghose at No. 32.—Ex. 916, 1004. M. O. 634 for 15 Ex. 923, came from Jasidhi on 2-3-08, M. O. 516 of 13-2-08 for 50 issued from Jasidhi, Ex. 920. Under orders of Chief Presidency Magistrate I intercepted letters addressed to Upendra Nath Banerjea at No. 32—Ex. 924, 896, Ex. 925 is the envelope of 924 and came from Baidyanath.

P. W. 78. Inspector Chandicharan Mukerjea—On 14th April 1908 was deputed to watch Howrah and Sealdah stations, 32 Murari-pukur, 23 Scott's Lane, 4 Harrison Road and 15 G. M. Dutt Lane,

On 18th April followed Abinash and Barindra from No 23 to No. 32. At G. M. Dutt's Lane saw Barindra, Kunjo Lal Saha, Sishir Ghose Upendra, Nagendra and Poresb entering No. 15. In garden I saw Sachindra Sen, Bejoy Nag, Naliny Gupta, Upendra, Paresb, Kunjolal, Hrishikesh and Sushil. I saw Sailendra in garden. At No. 4 I saw Sailendra, Barindra and Upendra. I kept no notes of the watches. Speak from memory.

I refreshed my memory from no materials. Have not discussed my evidence with any one. My evidence is entirely from memory. It is not always usual to keep notes during watches. I started watching 23 Scott's Lane from 16th or 17th April, 1908 may be till the 26th. I don't remember dates after the 18th. I saw Abinash on the 18th. Naren Mullick told me he was Abinash. No other incident about No. 23 to fix it in my memory. Bolai Ganguly watched No. 15 with me. Did not see Sivakali or Sarat Das watching the house, nor Satis Banerjea. Can't say if Balai was with me when I saw Sisir, Upendra or Kunjalal at No. 15. Did not see Suresh Ghose watching any other house except No. 134, some day between 20th and 27th April. Before being examined before Mr. Birley I did not make any statement verbal or written to any one of what I had seen. I kept to myself all that I had seen or known. Not sure of the dates I saw Hrishikesh or Kunjolal in the garden. I got instructions to watch places not persons. I did not try to ascertain names. We were dressed as low class peoples—never dressed as gentlemen. Can't say on what date I saw Sisir, it was between 20th and 27th. I shall be surprised to hear he was in Bombay up to 27th April and received an M. O. there. I can't give exact dates on which I went to watch the garden except 18th. Can't say on which date I saw which persons in the garden. I can't say how Abinash could be at Giridhi on the 18th as I saw him that day.

P. W. 79. *Huyler Duff., Supdt. Railway Police*—I escorted L. G. Sir. Andrew Fraser on 5th Dec. 1907 from Cattak to Howrah. At 2 A.M. on 6th was thrown out of bunk by a violent jerk. Train stopped. Found line ruined 40 to 60 yards to the rear of the last carriage. There was a hole 5 ft. deep and 5 ft. across. Rail was bent upwards, we got in and train went to Kharagpur. This was about 12 miles from Kharagpur near Naraingarh. Ex. 952 is a portion of the pot-sleeper. 953 and 954 are pieces of iron. 955 are three pieces of lead. 957 and 958 are raw cotton wool stained yellow. 959 are sal leaves with traces of sweetmeats. Ex. 960 and 971 found there. Some railway coolies were charged and convicted. Five out of 6 coolies. 3 confessed, 2 retracted and one did not. They were gang men, one was made approver.

P. W. 80. *Jogendranath Sen*—Pleader Tamluq. Father of Purua Chandra Sen. Proves Purua was with him almost regularly

up to 24th April, 1908 when he left without his knowledge. Was present at the Midnapur conference as a moderate. *Sandhya* was a vile paper. *Jugantar's* writings were grand. It is extremist. *Baudematarium* was Nationalist paper.

P. W. 82. *Debdas Karan*—Editor, *Medini Bandhab*, Midnapur. Ex. 874 was crest on the paper of lion and unicorn. 875 shews crest changed into *Jagadhatri* goddess. Change was due to Hem Chandra Das. 876 is his letter to me. Hem went to Europe to learn photography. My paper was moderate. Was present at the Midnapur conference. There was a Chatra Bhandar at Midnapur. Young men sold things e.g., Nirmal (i.e. Nirapodo) Purna Sen.

P. W. 83. *Nabinkrishna Ghose*—Produces from office of Joint Stock Companies, papers relating to *Chatrarandar Ltd.*, *New India Ltd.* and *Bande Mataram Ltd.*

P. W. 84. *Pabitracharan Dutt*—Managing Director, Chatra Bhandar. It was started in Bahdra 1313 first at No. 101 then at 113 Harrison Road. Ex. 78 is Articles of Association. Indra Nundy was one of the promoters. Aravinda and Subodh Mullik witnessed my signature. Nikhileshur was one of the auditors. I took 27 Kanai Dhar's Lane on lease for a boarding house. I let the house afterwards to *Jugantar* on 40/- a month. *Chatra Bhandar* had no branches in Calcutta or outside. It sold books, pictures. Ex. 1252 is a prospectus. *Jugantar* advertisement appeared on the back. I took serious objection to it.

P. W. 85. *J. D. Costa*—Clerk, Controller of Post Offices. Produced 846, 905, 1003, 1004 to 1007 money order forms.

P. W. 86. *Sukumar Mitra*—Aravinda is my mother's sister's son. Ex. 1061 is deposit of 500/- for the defence fund at Mercantile Bank. Defence Association at 4 College Square used to teach self-defence latti play, boxing, jujitsu &c—started in August 1907 and dissolved in May 1908. The appeal was for help of family of Basanta Bhattacherya, Printer, *Jugantar*, sent to jail. Abinash was a sort of Bazar Sarkar of Aravinda at No. 23. Ex. 298 is the cheque book of the bank. In March and April Aravinda lived at 23 Scott's Lane. He left Boroda in 1906.

P. W. 87. *Mathew Lawrence Banerjee*—Postmaster, Harrison Road. From Ex. 871 and 872 it appears that Rs. 20 - was sent to Dinesh Chandra Ray at Muzaffarpur on 8th April, 1908.

P. W. 88. *Bepin Behary Bose*—Aravinda's father's sister was my mother-in-law. Garden belongs to Aravinda and his brothers. In 1906 he asked me to sell the garden. He asked 7000/-, the highest offer was 5000/-.

P. W. 89. *Naba Jagendra Mitra*.—Cashier, *Bande Mataram Ltd.* I kept Cash Book Ex. 1067. Aravinda was sometimes Managing Director.

P. W. 90. Bankim Dutta.—Satyendra Bose was manager of Midnapur Chatra Bhandar. Nirupodo and Khudiram Bose were seen there.

P. W. 91. Major Frank Smallwood—R. A.

I was officiating Chief Inspector of Explosives. On May 2nd I examined the scene of the outrage at Mozufferpur. I examined the Dharmasala there. I helped to open the room in which Khudiram and Prafulla were said to have stayed. In the room I saw this bag (Ex. 1126). It was full of cotton wool. There was an impression in it, as of a small tin box which was shown to me. In the tin box also there was cotton wool.

On 3rd May I went to Park Street Thana at the request of the Commissioner of Police. I was shown a quantity of explosives said to have been found at 134 Harrison Road and at Maniktala garden : also certain literature. I examined the explosives and looked at the literature. (Shown XXXIV). It is a standard work : rather older than Sandford (Shown Ex. XXXVIII & 738). I was told this (XXXVIII) was found in the garden. This (738) is a copy of it. I have studied them very carefully. Except for a page or two they are the same. This (738) is perfect, but there were some other copies short of pages. The work is very clever, as a system for the manufacture of explosives. Anyone could use it, there are no technicalities or chemical formulae. The instruction is excellent. Many of the explosives are novel, not referred to in ordinary text-books. It would be useful in the hands of those desiring to execute a revolution. I think 72 explosives are referred to. The idea of the book is to use the contents of a Chemist's shop for the manufacture of explosives. "Kerosine powder" is an entirely new explosive. "Tannin powder" has not been used since 1848-50 : it was then tried for matches and was a failure and had not been manufactured since : it won't keep. The manual refers to destruction of bridges and building in detail and works out quantities of explosives required. Kerosine and Tannin powder are about 30% stronger than gun-powder. The manual refers to dynamite, gun-cotton, melinite, hell-off-ite, an American explosive. The last is the strongest explosive known. All the materials I examined are mentioned in the manual. I was shown jars full and empty, of acids, I thought about 50lbs. of acids had been used : there were roughly about 40 or 50lbs. left. About 50lbs. of explosives might have been produced, judging by the quantity of acids used. I was shown some dynamite cartridges said to have come from 134 Harrison Road. There were 19 or 20lbs. of dynamite. I destroyed 19 dynamite cartridges on the spot. I see 22 cartridges were destroyed to be accurate. I was present twice at Major Black's laboratory at the Medical College, when Major Black was analysing. I saw the fulminate

of mercury being analysed : I tested it with him : and some picric acid. When picric acid is fused, it is known as lyddite and melinite : they are the high explosives of England and France.

Carbolic acid can be used for the manufacture of picric acid. Nitro-glycerine is glycerine treated with nitric acid. It is a very strong explosive indeed. Caustic potash is more for neutralising acids : it is used in a laboratory for destroying bad attempts. It is used in one known mining powder, I think Farrier's. Caustic soda is available for the same use. Nitrate of potash is used for making gun-powder : that, sulphur and charcoal make gun-powder. Ammonium chloride is used for making picrate of ammonium : such picric acids are used for exploding picric acid. Red phosphorous is used for detonating compositions. Mixed with chlorate of potash, with or without sulphur, it is the ordinary detonating or cap composition used in the army. Mercury is used for making fulminate of mercury. That is used in nearly all detonators. It has to be kept in water, as it is so very sensitive : if touched, it will go off. When they load it, they damp it with alcohol. I saw 6 samples of fulminate of mercury which must have been manufactured within 48 hours. I saw them on filter-papers. It is manufactured on filter-papers, strained through them and left to dry. Sulphide of lead is not an explosive. Sulphide of antimony could be used in conjunction with other substances in the manufacture of detonating composition as a detonator.

I saw shells in all stages of manufacture. It is usual to make shells of soft metal so that you can fit them with a screw, to admit the detonator. Copper and tin make a soft metal : with zinc they make gun-metal. I saw a crucible with small pieces of tin and copper cut up. That is what one would expect in making a shell. (Shown 597). One piece is zinc, one tin. (Shown 598). It is zinc. One cuts the pieces small enough to go in to the crucible : there is no standard size for cutting. (Shown 593-1 & 2.) They are sand-moulds. They are the size of the actual manufactured shells that we saw. (Shown 596). They are copper cuttings. (Shown 614). Inside them I saw sand-cores similar to those just shown (513). The spikes are what are called dead heads formed when the gas forces the metal out. (Shown 637 & 662). This (637) is a completed Orsini bomb and this (662) an incomplete one. An Orsini bomb has holes to be fitted with protruding detonators so as to insure its going off. (Shown Ex. 600 & 635). These are ball-cork used on cisterns. They are suitable for use as bomb-shells and have been used in history as such *e.g.*, in Deasy and Flanagan's case. This (660) is the knob of a bed-stead. It had picric acid in it and has now. Used as a bomb, it would kill you outright. It would have a radius of about 5 yards. The danger zone of this (637) would be quite 30 yards. That of these (600 & 635) would be 25 to 30 yards. (Shown 599). It is used in a laboratory under

a retort to prevent the flame breaking the bottom of the glass: it spreads the heat. (Shown 603). They are used with the ball-cocks: they are filled with sulphuric acid. Immediately before throwing, the sulphuric acid is released: usually a thickness of paper is placed between to give time. (Shown Ex. 36). I remember the original. It was full of picric acid fused. I was 2 days trying to unload it and it was so dangerous that I recommend its destruction. These (604) are the levers for the taps (603). This (610) is an iron shell. It contained picric acid and 24 spikes sharpened at both ends. The danger zone of such a shell would be about 70 yards. It might be 100. I thought it was meant for street-fighting, as it would be unnecessary to have so large a thing for one man and it would be hard to conceal. I unloaded it at Park Street Thana. This (661) is the reservoir of a cheap lamp. It was filled with fused picric acid. Its danger zone would be about 30 yards. (Shown 631 and 687). They are Noble's detonators. They are the ordinary commercial detonators. I remember 6 coils of fuse. These are they (583). These (623) are electric dry cells. This (584) is electric wire. With it one could fire a bomb at the distance of the wire. These (626) are moulders' rods for holding up the core in moulding a shell. This (614) has a spike of the same gauge as the rods. This (586) is the ordinary hand-book on moulding. It has run through 9 editions. (Shown 594, 595). They are pruners on which bombs could be shaped. I doubt if the Mozufferpur bomb was larger than the small one: I thought it would have been less than a tennis-ball. (Shown 599, 605, 607, 634, 666, 628, 667, 674, 675, 696, 676, 683, 677, 678, 680, 681, 682, 679, 684, 694). They are laboratory apparatus, glass retorts, etc. With it fulminate of mercury could be manufactured. It is a complete apparatus for the purpose. (Shown 632, 1-4) They are samples of fulminate of mercury, those that we saw on the filter-papers. As they were dangerous to keep, we put them in water. They varied much in quality, suggesting that some one was under instruction. Two of them would not go off at all. I was shown some dynamite in a bucket, said to have been found in the garden. There was about 20 lbs. of it, and about 20 lbs. of gelignite in cardboard boxes. It was the gelignite to which I referred when I spoke of destroying 20 lbs. of dynamite. There were 19 dynamite cartridges from No. 134, Harrison Road, not the 20 lbs. of dynamite. The gelignite was in the form of cartridges. Gelignite is a trade term of dynamite. The dynamite and gelignite found in the garden was quite sufficient to destroy this building. (Shown Ex. 591). The article is by Berthelot, the most expert chemist of the day. (Shown 387). These are cores for bombs (shown Ex. 390). This is a stirring rod for stirring metal, in a crucible. Resin is used for mixing with sand, for making moulds. Files, chisels, tongs and hammers are necessary for making bombs. (Shown 209). It is a box of Whit-

worth taps. I destroyed one bomb as the picric acid had formed picrate of copper by contact with the copper and was dangerous. Sulphuric acid is used in manufacturing nearly all nitro explosives to carry off the surplus water. You require it in all operations. (Shown 215). There are iron pipes; such are frequently used for bombs. In the book (738) there is a diagram showing how to fit them up. A man in Paris, an ex-Lieutenant Russian Engineer, Sfeanski, is the reputed author of this (Ex. 738). I have not seen the work before I saw it in this case. (Shown Ex. 735). It contains a ball of box: it might be used as a core for hammering round, not for moulding. (Shown 712, 713, 714, 715.) I examined these with Major Black. They looked like preparations for making moulds. (Shown Ex. II). It is an ordinary moulder's box (Shown Ex. III). It is the rough casting of a bomb. (Shown XXIX). They are a moulder's box. It has been used. There is still sand in it. (Ex. XXXI shown). It is a wooden core for hammering envelopes on. (Shown 214 1-5). They are moulders' boxes, used for holding sand. I have seen (Ex. 429). They are cuttings of metal for making shells. I saw (Ex. 437, 438). One is an empty bomb and the other a sample of its contents. When we saw the bomb, it had not been loaded; it had only the core. (Shown 384). The first is a formula for fulminate of mercury: there is one for picric acid and one for nitro-glycerine. They are correct formulae and very like the Aligarh ones.

(Shown Ex. 1210). The first formula is the ordinary cap composition. The second is the first with ground glass added, which makes it more sensitive. The next is a correct prescription for fulminate of mercury. There is a reference to the method of firing by means of an electric battery, with platinum wire. The formulae point to explosives: nothing else. (Shown Ex. 667). The first thing is a formula for making soft metal, then instruction for foundry sand, then bullets. There are instructions as to how much powder would go into a shell, worked out rather childishly, but probably correctly. It is elementary but correct. Fulminate of mercury is often called Detonating mercury. I am almost sure this is taken out of the Maniktola book. I have read up a little about match making, I am not conversant with it. Chlorate of potash, sulphur and red phosphorus is in nearly every match. Filter papers are necessary for laboratory operations of any kind. In making moulds castor oil is used: for binding the sand together. I cannot say how long after you would find traces: you must ask a chemist that. I do a lot of moulding myself and use castor oil.

P. W. 92. *Sukumar Sen*.—was Managing Director of Bande Mataram Ltd. for sometime. I knew Aravinda. He was Editor for some time, object was more political than commercial. Old Bande Mataram was printed at Sandha office and we had to pay

Rs. 2500. Bepin Pal borrowed the same from C. R. Dass, R. N. Roy and Sailendra Ghose. Bande Mataram had no connection with other papers and it was certainly no link in any conspiracy against Government.

P. W. 93. *S. I. Suresh Chandra Ghose*—Began watching from 10th April 1908. To Hem Das's house 38-4 Raja N. K. Street saw Barindra, Narendra Gossain and Indu Roy enter that day. Found them at Howrah station with a canvas bag entering a train at 5-30 p.m. I and others did the same. Bag was like Ex. 659. Got down at Mankundu and followed towards Chandernagore. Gossain parted, we lost sight of Indu but followed Barindra to Hari Neogy's house. Came back to station to report, went back and watched whole night. Did not again see him. Searched next day but failed to find him. On 16th followed Hem Das to 78 Russa Road and again on 17th. On 20th watched the garden. Upendra, Nirapado and Krishua Jibon came out. Krishua went towards Bagmari. Other two entered Maniktola Post office brought a big envelope, opened and read a letter and then went towards Sealdah. Conversed with two Madrassis on the road, one was Kane. I followed Madrassis. They entered No. 15 G. M. Dutt's Lane at 6 p. m. On 21st watched garden. Nirapado and another came out, took tram and went to D. Waldie & Co. chemists. Nirapado brought a big jar and some liquid. Jar was like Ex. 435. He also purchased two iron pots like Ex. 392. Then they returned to garden. On 22nd watched garden. One of the Madrassis came out and purchased eatables. On 23rd Barindra came out at noon and went to 15 G. M. Dutt's Lane. 12 or 14 in batches of 2 and 3 also entered the house. Kane came out and went to get a medicine and returned. Upendra, Sailendra, Kunjolal, Bibhuti, Nirapado, Indu, Bejoy and Ullaskar were the men who entered. Also Kanai Lal Dutt who had been hanged. On 24th Barindra came out of No. 15 at 6 A. M. and went to 23 Scott's Lane then occupied by Aravinda. Sailendra and Abinash I had seen before to go to No. 23. On 25th followed Barindra from garden to No. 15; he then went to No. 48 Grey street, *Narasakti* office, then went to 38-4, Hem Das's house. On 26th watched No. 15. A 3rd class hackney pulled up there. Ullaskar entered with a bag and two steel trunks like Ex. 572 and 573. The carriage went to No. 134 Harrison Road. Ullaskar entered with bags and Nagendra and Dharani took in the trunks. On 27th April entered No. 134 on plea of purchasing medicines and found the trunks under *tuktaposh*. That day saw Kane enter a train and I followed up to Sini as I found he was going to Nagpur. On 3rd May I pointed out Din Doyal Bose at Tram Depot. Arrested Narendra Gossain at Srirampur on 5th May. Identifies several accused in the several houses. Everything I said is from pure unaided memory. I can't give other dates.

Was a fellow student with accused Barin Ghose at Deoghar High School in the same class. Next I saw him at No. 4 Harrison Road on 10th April but did not speak to him. Up to 2nd May did not know what was happening in the garden. I watched and saw people going there. Sometimes I passed Barin. I could know him from the back. I studied the faces. Can't give other dates besides those I gave in examination-in-chief. Can't say with reference to a particular man at a particular place whether he was alone or with some one else beyond what I have said. After 2nd May Purna Biswas and I lived in the same house till October.

P. W. 94. Raghunath Banerji—One of the Directors of the Chattra Bhandar Ltd. Nikhileshwar was another Director. Indra Nandy was another, subsequently became Secretary.

P. W. 95. Insp. N. K. Mullik.—watched garden from 8th to 26th April 1908. Also watched other houses. At garden saw Abinash, Asoke, Sachindra, Hrishikesh, Upendra, Bibhuti, Indubhuson, Poresb, Kunjolal, Krishna Jibon, Barendra, Narendra Buksi, Purna and Hem. At No. 4 Harrison Road saw Sailendra, Dindoyal, Upendra, Ullaskar, Krishna Jibon, Nirapado and Barindra. At No. 15, Upendra, Ullaskar, Krishna Jibon, Hem Das and Barindra. At No. 23, Sailendra, Dindoyal, Abinash, Upendra, Ullaskar, Hem Das, Barindra and Arabinda. I arrested Krishna Jibon on 12th May at his home in Kausat, Malda. He is an adopted son. I found Ex. 850, 851 and 853. I kept no notes of the watches.

The garden is not surrounded by wall. It has no gate. It is not the practice of the C. I. D. to keep notes. I did not give the Crown Solicitor those details. Do not remember when I first saw Hem Das, but it was at No. 23. He was with one or two men. Can not recollect who they were. I saw him again on 26th. Don't remember when saw him again. Did not hear revolver shots in the garden or men drilling there. Can't remember the dates I watched No. 15 except the 26th. I saw Krishna Jibon only once there. I was in charge of the properties seized in Calcutta. I assisted Inspector Samsul Alum in instructing counsel for the crown. I brought the things to court from Police Malkhana at no 3 Dedar Buks Lane. After exhibited they remained in boxes in court. Samsul Alum and other Police officers often inspected documents in the room in court hours. The name of Aravinda was given to me in connection with the watches. I saw him on 18th at No. 23. I shall be surprised to hear he was at the Kisoregunj conference from 18th to 21st April.

P. W. 96. M. A. Usmani.—I was a Sub-Inspr. I resigned. On 3rd May arrested Dindoyal while he was working in the Tram Depot.

P. W. 97. H. O. Weller.—Asst. Engineer, P. W. D. Railways.—

Ex. 97 I got from Police in August to verify contents. It contains notes of inspection of E.B.S. Ry. from Dum Dum to Bagoolla with culverts, bridges, groves etc. correctly shown.

P. W. 98. *Sirakali Dass*.—Police Informer. From 10th April 1908 watched 38-4 Raja N. K. Street, up to 20th. Saw Hem Das, Barendra and Narendra Gossain. One day a cart was brought by Porosh and another, 4 trunks, a kerosin tin case of wood (without the tins) and cooking utensils were removed in it. On 26th I hired a room there. Hem Das gave me a receipt Ex. 854. Next day I was not given the room and I got money back. I gave a receipt Ex. 358-6. Kunjalal, Bibhuti, Dindoyal also visited the house. Watched other houses and saw some accused visiting them.

I used to live at Ramsodoi's house at 56 Amherst Street. I did not say that I was informer as my pay was not settled. I got advances. I got money when I wanted. Hem Das's servant was a barber. I got information from him. Witness Sarat Das is my sister's husband's brother. Biswas told me to follow people who looked like *budmashes*—which means *Goonda* class. I understood my instructions to be to follow such men as went about heating people or looked as if they would. I did not smell rebellion or hear anything about bombs. I worked as I was paid. I never kept any note. Watched Hem Das's house from a grocer's shop, once from a prostitute's house. I don't remember her name. I passed myself as a school boy who had run away and wanted to spend sometime in her house. Don't know grocer's name. Never reported to Inspector Biswas the name of the grocer or prostitute or the barber. I did not understand that I was watching conspirators. My pay was fixed after I gave evidence.

P. W. 99. *Nurse Wallace*.—I know 37 College St. In May I heard a loud explosion there. I saw some people running in or out of the gate of 37. There were patients in my room in the out door dispensary. Don't know if they looked startled or spoke to each other.

P. W. 100 *Nurse Burke*.—Heard sound of explosion about 5th or 6th May 1908.

P. W. 101. *Insp. Soohy Bhushan De*.—In October 1907 I got information as to the existence of a Secret Society. I reported it to the Director of Criminal Intelligence, India. Since then I have been officially enquiring. At that time I was Inspector, C. I. D., on deputation. On 8th February I received more specific information. I was placed in charge of the enquiry about it, on the 8th. Police officers were deputed to work under me, Inspector P. C. Biswas, Sub-Inspector Narendra Kumar Mullik, Satish Chandra Banerji, Chandi Charan Mukherji, Head Constable Sarat Chandra Palit, Bolai Chand Ganguly, Madhu Sudan Bhattacharji, Sub-inspector Suresh Chandra Ghosh and agents

Sarat Dass and Siba Kali Dass. On 29th February I received information that the Head-quarters were at the garden. I deputed Sarat Palit to see the garden, not to watch it: to see whether it was the head-quarters. I don't remember the date on which I deputed him, it was the beginning of March. My enquiries were proceeding from the beginning of February till the middle of April. I did not take part in the investigation: my duty was to supply intelligence as reported to me.

On April 9th Satish Banerji reported to me that he noticed Barindra Kumar Ghose coming out of Hem Chandra Dass's house 38 1/2, Raja Naba Kishen's street. He did not give me the names. I had previously given him a descriptive roll of Barin and he told me that a man of that description came out of Hem Chandra's house. He gave me Hem Chandra's name. He said he followed the man up to the Muraripukur garden.

On 12th April Bolai Ganguli reported to me that he saw Barindra Kumar and Abinash Chandra Banerji, mentioning both by name, conversing together at Scaldah Station, and that he followed them to 23, Scott's Lane, where Arabinda Ghose was then living. He mentioned this about Arabinda, giving his name. From that place he said he followed Barindra Kumar to the garden in Muraripukur Lane.

On 20th April Suresh Chandra Ghosh reported to me in the evening that he had followed 3 men from Muraripukur garden and noticed them talking to 2 Madrasi boys near Sukea Street and then followed the 2 Madrasis to 15, Gopi Mohun Dutt's Lane.

On 12th April I knew Arabinda by name and knew he was living at 23, Scott's Lane. I have known Arabinda by name a long time. I don't know him even now by sight. In October 1907 I was aware of his name, before I got the report about the Secret Society. I was under the impression that he used to contribute to the *Bande Mataram*.

On April 20th Suresh took me to 15, Gopi Mohun Dutt's Lane, immediately after reporting to me, I recognised the house as that of Adhar Babu, Pleader.

Satish's report of 9th April was written. I sent it to Mr. Plowden. Bolai gave me an oral report which I wrote and sent to Mr. Plowden. Suresh's report to me was oral and Biswas entered it in the diary after 2 or 3 days. I did not make a note of Suresh's report at the time. Suresh reported separately to Biswas. I came to know about that subsequently. I made no record of the report.

I reported the existence of the Secret Society to Mr. Stevenson Moore, Director of Criminal Intelligence. The information of 8th February I reported to Mr. Plowden in writing. The information

of 29th February I reported in writing to both Messrs Stevenson Moore and Plowden. The whole investigation was a special one. I think the police officers under me did not keep written notes of what they saw. I don't know whether they did or not.

Reports of the 9th and 12th April were written and submitted to Mr. Plowden. I won't give the name of the informer. Informers got regular pay. I gave description of Barin only to Satis and Sarat. The description was got from informer. Biswas was the investigation officer. The description of Barin was long hair, thin build, medium complexion, wears spectacles. When Barin was found on 9th April I went out of the case.

P. W. 102. S. I. Bolai Ganguly.—From 10th April watched 38'4, Sealdah Station and the Garden. On 24th April hired a tiled hut opposite No. 15 G. M. Dutt's lane and watched the house. I found several accused coming from and entering other houses. Identified some accused. On 19th May went to Nagpur. At Morris College came to know that Balkrishna Harikane came from Yotmal, Berar.

P. W. 103. A. K. Mohursami Aiyar.—Ex. 1059 is the account opened in the name of Aravinda and Sukumar Mitra with the Mercantile Bank.

P. W. 104. Bhagabati Chandra Ghose.—Mahurur of K. P. Gajendra Mahapatra maternal uncle of Hem Das. Hem went to Europe. I wrote Ex. 327 to him as I heard Police were after Hem.

P. W. 105. A. C. Banerjee.—Barrister. Ex. 1028 and 1029 are my writing given to one Subodh Bose on 8-4-06 as he was interesting himself in Khudiram Bose's sedition case. The letter was to Mr. A. Chowdhury. I know Provas, Indra Nandy and Delabrata. Provash I saw in Swadeshi meetings. Swadeshi agitation began on 7th August 1905. Partition of Bengal was on 16th October. Swadeshi agitation was to encourage indigenous industries and boycott was preached as a retaliatory measure to the Partition. If moral persuasion failed social pressure was used. Physical force, I don't think, was advocated. Legitimate alteration of the form of Government was preached at public meetings—not by force. Moderates were for Swadeshi and Boycott but would ask for Government help when necessary. Extremists were only for self dependence, and rely on passive resistance—not active resistance. Partition was carried out in spite of almost unprecedented opposition. There was general impression that several departments of Government were engineering an agitation in favour of Partition through Mahomedans.

The name "Extremists" was given first by the London "Times." Aravinda deduced his politics from religion—his politics had a spiritual side. The papers "Bandemataram," "New

India," "Navasakti," "Jugantar," "Sandhya" were not limbs of the same conspiracy. There was controversy between them. Aravinda never suggested recourse to violence, he was constitutionally incapable of it. He was more a philosopher than a politician. Measures of "self-defence" were organised when Mahomedans were put up to attack Hindus. I had never seen the view of the extremists that there should be bloodshed or murder.

P. W. 106. *Dwarkanath Bhattacharya*.—Teacher Rajshahi School. Narendra Buxi and Krishna Jibon were in the School in 1905. When Sir Bamfylde Fuller came to Rajshahi 70-80 boys were absent from school. The two boys were rusticated with two others. They were good boys in their classes.

P. W. 107. *Surat Chandra Das*.—I was accused in a Forgery Case, was made approver and gave evidence. Then employed by Police in 1905. Watched several houses and saw various accused visiting them. I was concerned in fraudulent conspiracies from 1900 and forged securities of over a lakh were circulated.

Identifies—Sailendra, Abinash, Aravinda, Barindra, Hem Das, Bejoy Nag, Dindoyal and others.

Did not see Hem Das go to No. 15. Once went to No. 48 Grey Street. I started an eating house in 1901. In 1905 I gave evidence in the High Court. I said I was in fraudulent conspiracy with forgers. I was then arrested in 38-4 Raja Navakisen Street. I occupied a part of it. In 1900 I began the conspiracy. Forged securities for Rs. 1,25,000 were circulated. Blank G. P. Notes were got out of the Bank by bribing clerks. On one paper the name of Prosad Das Bord was forged. I may have been present then. Heard Sailendra's name in February before I began watches. I watched from middle of March.

P. W. 108. *Balwant Krishna*.—Head Constable Nagpur. Aravinda delivered four lectures to Extremists at Nagpur on 22 Dec. 1907 and 30th., 31st. Jan. and 1st Feb. 1908. Sam Sundar Chakraborty was with him. I took no notes but made verbal reports to superiors.

P. W. 109. *F. C. Bapat*.—Inspector, Dhulia, Fandesh. Aravinda came to Dhulia in Dec. 1907 on his way to Surat Congress. On 26th Jan. 1908 he delivered a speech. I took notes Ex. 82.

P. W. 110. *Sana Abaji*.—D. S. P. Khandesh. Present at meeting on 26th Jan. when Aravinda delivered lecture. Last witness took notes and made a report.

P. W. 111. *Dattatraya*. Head Constable, Nasik. Aravinda came to Nasik on 24th Jan. 1908. I took notes of his lectures—Ex. 84.

P. W. 112. *Das, Gopal Rao*. Amraoti. Aravinda came to Amraoti on 28th Jan. He delivered a speech. I noted down

immediately after the meeting. On 29th he made another speech.

P. W. 113. K. B. Dutt. Barrister. Presided at the Midnapur Conference on 7th Dec. 1907. There were volunteers. Arabinda was present. There was opposition to my election as President. They wanted me to speak on Swaraj and Boycott. Eventually I was elected. I appealed to Arabinda to stop row coming from the boys. There was confusion about election of subjects committee. I had no knowledge what views Arabinda held. The District Judge was for allowing the boys to use Bande Mataram badges. He designed the badges in my presence. The Magistrate was opposed to it.

P. W. 114. Manikram Kohar. Postman, Bagbazar Post Office. Delivered letter addressed to Upendra Mazumdar and Bariudra Ghose at No. 15 Gopi Mohan Dutta's Lane.

P. W. 115. Kabiruddin Ahmad. Deputy Inspector of Schools. Bengali book Ex. 1461 was given to me for translation.

P. W. 116. Masudul Haq. Sub-Registrar, Kushtia. Travelled down with Kunjola Saha in same train on 17th April 1908 to Calcutta.

P. W. 117. H. C. Ghattok. -Same as last witness.

P. W. 118. Monmatho Das.—No. 15 G. M. Dutt's Lane belongs to pleader Adhar Ghose whose clerk I am. Nirupodo calling himself Amarendra Banerjee took lease of the house in April 1908. Receipt dated 19-4-08. Ex. 385/1 was given by me to him for rent paid. I did not see who lived in the house.

P. W. 119. S. I. Dandabandhu Bhattacharya. Sub-Inspector, Maniktola from 23rd December 1907 to 15th June 1908. Went to the garden and spoke to people there to Upendra and Sachindra, about 20 days before 2nd May. Upendra was in a Samyasi cloth. Sachin said he was taught Geeta there by Upendra. I don't identify any other accused. I had no suspicion that arms were hidden or manufactured there. I had no suspicion about the place. On two other occasions I went there. Did not find the two but others who said they had come to see the Samyasi. Did not see Police Officers near the garden on those occasions. I was called at 8 A.M. on 2nd May to the garden and saw lots of Police there. 18 men were arrested, under sec. 51 Cr. P. C. I got Ex. 896, 921, 925 from Post Master. I entered a charge in the Thana Diary. A first information was brought to me on 17th May signed by P. C. Biswas.

Upendra's conversation interested me. I can imagine he would interest young people. I never heard guns fired at the garden nor the beat constable report to me. I told them I was a police officer.

P. W. 120. *Methu Pasi*.—tapper. Took lease of one tree in the garden for Rs. 2 - which I gave to Upendra Banerjee and got a receipt Ex. 855. There were 56 Babus. Upen used to read—others moved about, sat and listen. Did not see them practising firearm, nor heard report of gun.

P. W. 121. *Madhub Roy*.—Teacher, Kustia School. Sebak Samity started in 1907. Kunja was Captain of sporting branch, I was President. Kunjo taught lathi play. There were physical mental and moral branches. Movement for physical culture going on in the country for 15 years.

P. W. 122. *Satish Chandra Mookerji*. Bengal National College was started in August 1906. I was sometimes its Principal. Aravinda was sometime Professor and Principal. Prospectus Ex. 1465. Sachindra Sen was student from 27-8-07 to 20-9-07. Bibhutratna attended from 13-11-06 to 21-9-07, Susbil Sen from 20-7-07 to 27-1-08, Birendra Sen from 20-12-06 to 23-3-08.

P. W. 123. *Amrita Lal Roy*. Khudiram Bose was my brother-in-law. He was hanged. Ex. 73 is his photo. He lived also with Satyendra who was hanged. Purna Sen was at school with Khudiram.

P. W. 124. *Lala Bhupen Roy*. Sudhir used to attend Khulna National School.

P. W. 125. *Protop Chaki*. Ex. 32 is photo of my brother Profulla Chaki. He shot himself. He was never known as Dinesh Ch. Roy.

P. W. 126. *Jagannath K. Nayak*.—Knew Hem Das for 12 years. He was a photographer, and went to France in Sep. 1906. Ex. 321, 329, 364, 366, 368, 39, 333 are his writings. He told me on return that he learned jewellery business and photography in France.

P. W. 127. *Bhupen Mohan Das*.—Purna Sen was connected with *swadeshi* movement in Tamhug. Khudiram Bose, convicted and hanged for Muzaffarpur murders, stayed in his house. I was once convicted of theft but released on appeal. Police were not present at the meeting. Don't remember what Purna said at the meeting. Can't say whose photo is Ex. 73.

P. W. 128. *Bisweswar P. Sen*. Proprietor of 'Kamada Press' at 36 Bonomali Sarkar's Street. *Jugantar* was printed in my Press from Chaitra 1312 to Baisak 1313. I have done work for Chhatra Bhandar, and job work for the *Nakasakti*. I gave up printing *Jugantar* as I was told it was written in such a way that my Press might be confiscated.

P. W. 129. *Atulkristana Mondal*. Head Constable. Jogendra, alias Lal Behary Sen, writer of *Sandhya* was prosecuted for false declaration. Provas De stood surety for him. Provas declared

himself Printer and publisher of *Jugantar* in Sept, 1907 but was not accepted. He was convicted by Mr. Kingsford for assaulting Police on the day Bepin Chandra Pal was convicted.

P. W. 130. *Safidel Sheikh*.—Hrisikesh hired his carriage to go to Chaudernagore in Sep. or Oct. of 1907.

P. W. 131. *Sachindra Chatterji*.—I lived at 38 Muraripukur Road. Many people lived at 32. Ullaskar, Upendra and Poresb I saw near about the garden. There is a path through the garden and people pass through it.

P. W. 132. *Mohammad Bariuddin*.—Postman, Harrison Road Post Office. 23 Scott's Lane is my beat. Arabinda lived there. I delivered money orders and parcels to him. Others lived there and got their letters. Identifies Bariindra only.

P. W. 133. *Ludu Bhunson Bose*.—People used to come to No. 32 Muraripukur Road. I can identify only Bejoy Nag.

P. W. 134. *Jalendra Lahiry*.—I owned once this pistol Ex. xv. in 1907. Narendra Gosain was my cousin. I sold it to him for 60 Rupees. Another man like Upendra was with him.

P. W. 135. *Narendra K. Sarkar*.—Elder brother of Sudhir Sarkar who left School in Jan. 1908. He used to ask men to use *swadeshi* goods. He stayed sometime in Rajparan Bose's house in Deoghar in Nov. 1907.

P. W. 136. *Jog Jibon Roy*.—Brother of Nikhileswar Roy. I used to stay at "Samat" Press at 68 Maniktola Street. I heard it was my brother's.

P. W. 137. *Fagra addin*.—Constable. Remember the bomb explosion at Muzaffarpur. Ex 31 and 73 are the *Photos* of the two men who used to walk about for 2 days at night near the club where bomb was thrown.

P. W. 138. *Kisorey Monette Banerjee*.—My office was at the Dharamsala in Muzaffarpur. End of March 1908 one Dinesh Chandra Roy and a boy came there from Calcutta. They said they lost money in the train going to Benares and I permitted them to stay. Money came to them to my care. I never saw the men after 10th April.

P. W. 139. *Patch Singh*.—Constable Muzaffarpur. After murder of two ladies, I was deputed to Waini Station. Seized Khudiram there with two pistols Ex. 812 and 813. He had also cartridges. He was hanged.

P. W. 140. *Abdul Rahaman*.—Lived opposite the *Jugantar* Press at 41 Champatola 1st Lane. Upendra, Birendra Sen, Krishna Jibon and Kauri Dutt used to go there.

P. W. 141. *Andira Ch. Sangal*.—Clerk in Rungpur Zilla School. There was a disturbance over a political meeting. Some

boys were fined. Poresb Moulik fined 5-. Profulla Chaki was in same class with him.

P. W. 142. Upendra Lal Singh.—A parcel was received from Baroda and delivered to addressee on 21st March 1908, Ex. 976.

P. W. 143. Rankelaran.—Postman. A parcel came from Baroda addressed to C. B. Lele.

P. W. 144. Adinath Roy Chowdhury.—Clerk, Jardin Skinner & Co., Nikhileswar was employed by the Company at Chandpur in the jute season 1905-06 as mullasil purchaser. Proves some signatures of Nikhileswar.

P. W. 145. Charn Chandra Chaki.—Profulla Chaki was my brother. Ex. 31 is his picture.

P. W. 146. Rakhal Das Gupta. Ex. 905 shows M. O. No. 240 dated 29th April for Rs. 8, came from Habiganj redirected from Deoghar to Harrison Road.

P. W. 147. Rai Charan Mozumdar.—S. I., Rangpur. Arrested Nalini Kanta Sirkar there in a political procession on 17th October 1907 marching with lathie, singing Swadeshi songs. He was fined.

P. W. 148. Satyendra Nath Ghose.—Brother of Birendra Ghose. Hemendra Ghose is my cousin. Arabinda's father-in-law Bhupal Bose is another cousin. Birendra was at Borai's Kutir in Deoghar before arrest. Proves some writings. Shisir told me he started a handloom at Khulna and was going to Bombay to learn work. Hemendra told me he would go with him.

P. W. 149. Bandendras Mukerjee.—Teacher in Giridhi National School in 1314. Narendra Bakshi and Krishna Jibon were students there. Narendra from 17-7-07 to 11-4-03 and Krishna Jibon from 8-7-07 to 18-2-07. They were good boys in their classes.

P. W. 150. Kunal Mohan Dutt.—Present at the search of Birendra Ghose's house on 14th May. Saw him at Sagardari 23 months before his arrest.

P. W. 151. Givija Sundar Chakrabarty.—Manager of *Bande Mataram* was manager of *Sandhya* before it for 2 years. Ex. 1050 "For me thou art not" was never a nickname of Arabinda. The paper ceased and Press confiscated by Govt. *Sandhya* was not connected with *Jugantar* or *Bande Mataram* or *Narasakti*. On Good Friday 1908 Arabinda left for Kishoregunj in Maimensing, on Sunday before 17th April. Abinash went to Maniram-pur in a *Sankirtan* party the day before *Chait Sankranti*.

P. W. 152. Debendra Chatterjee.—Realised Municipal Taxes for 32 Muraripukur Road belonging to K. D. Ghose. On 28th March realised taxes, found 23 men—one was reading.

P. W. 153. *S. I. Premade Mukerjee*.—Went to arrest Barindra Ghose to Boral's Kuti in Deoghar on 19th May. He was not there. I arrested him at Sagardari on 14th. Perhaps he said he came home the day before. He wanted to make a statement in train. I took him to Mr. Birley,

P. W. 154. *Tarapada Chatterjee*.—Produces from Postmaster General's Office Ex. 1069 and 1070 and also M. O. dated 11-4-08 from Baroda for Dikshit to Arabinda—Ex. 1471.

P. W. 155. *D. B. Kolli*.—Adjutant of Police Chandernagore. On 11-4-08 went to house of Mayor M. Tardival at 9-30 P.M. He gave me a bomb Ex. 1044. Subsequently brought it to Major Black. It was partially exploded. Mayor stopped a *swadeshi* meeting on 14th April.

P. W. 156. *Gopi Guala*.—Constable. On 8th June during a search in Grey Street a woman threw a bundle of papers from a window. Inspector picked it up.

P. W. 157.—*Ram Gohari*.—Postman, Baghbazar. 32 Marari-pukur is my beat. Saw 10 12 15 men there. Saw Upendra, Barindra and I think Abinash there. I went into the house. Saw Babus eating, reading, bathing &c. and nothing else.

P. W. 158. *Sub-Ins. Suresh Mukerjee*.—Attended a political meeting at *Panther Math*, Cornwallis Street called to raise funds in the name of Leikut Hossain. 5000 people attended. I took notes Ex. 91. Hirendra Nath Dutt presided. Arabinda, Abul Kasem, Lalit Ghosal, Samsundar Chakrabarty and Bepin Chandra Pal spoke.

P. W. 159. *Sarada Charan Sen Gupta*.—Teacher, Jessore Zilla School. Manager of *Sandhya* for a year in 1907. While press was at 23 Sib Narain Das' Lane two or three issues of *Jugantar* were printed there on payment of costs. Upadhyaya and Arabinda did not agree in their opinions. There was no connection between *Sandhya* and *Jugantar* and *Bande Mataram*. Arabinda arrived at Kishoregunj on Saturday after the Good Friday.

P. W. 160. *Ins. E. B. Huey*.—I arrested Sushil Sen on 26-8-07 as he struck me on the neck with his hand and umbrella. Bepin Chandra Pal was being tried that day for Contempt of Court in refusing to give evidence against Arabinda. Sushil was convicted on 27-8-07 to 15 stripes.

P. W. 161. *Upendra Nath Bhattacharya*.—Brother of Abinash Bhattacharya. Abinash had the *Sadhana* Press at 41 Champatola Lane, where there was a Mess upstairs. Sailen Bose lived there. Saw Dindoyal there. After he was acquitted and Basanta acquitted he sold the Press. I saw *Jugantar* printed there, on one occasion.

P. W. 162. *Bepin Behary Banerjee*.—Two years ago Naren Gossain went with Arabinda Ghose and 2 3 others to Hasnadanga.

He stayed 3½ months. A man like the one in photo Ex. 31 was with him.

P. W. 163. Aju Bakar Singh.—Head Constable. 32 Muraripukur is in my beat. Saw 7/8 men there in *garua* cloths, e.g. Upendra, Nikhileswar, Indra Nundy, Hemendra Ghose, Barindra, Bibhuti, and Poresh. I told them I was Policeman. They said they were *sadhus*.

P. W. 164. Jagat Singh.—On 24th Jan. 1908 attended Political meeting as Police officer at Nasik. Aravinda delivered a lecture. I made notes and then a report. Notes marked Ex. 86. I was dismissed on 15th Nov. 1908.

P. W. 165. Malik Fazle Huq.—Constable. Used to go on rounds to 32 Muraripukur Road. Saw people wearing *garua* clothes. Saw Upendra, Nikhileswar, Sudhir, Sachindra, Sishir, Nagendra, Ullaskar, Bibhuti, Hemendra, Paresh, Kunjalal and Barindra. Saw one Bhaba Bhusan Mittra also. A case is going on now against him. I went there 4-5 times. Upendra said they were *sadhus* and Police had no necessity to come there. I went there last on the night before the arrest. I was not suspicious. I had no necessity to look at them closely. I saw them doing nothing but reading. I had no object in looking at their faces.

P. W. 166. Ghaneshram Das.—I was present at the two searches of Hem Chandra Das' house. I know 15 Bhowani Charan Dutt's Lane. Saw people dressed as *sadhus* going there. Identified Debabrata Bose and Indra Nundy. I am not a particular friend of the Police. I lived at Pataldanga and was taken to Hem Das' house by Police at Shambazar.

P. W. 167. Upendra Nath Bose.—Sub-Inspector. I searched 55-3 Grey Street. Ex. 1188 and 1190 were found at the search. I was present also at the search of No. 48 Grey Street.

P. W. 168. Jnanendra Nath Sarkar.—Taranath Rai Chowdhury was my tenant at 4 Raja's Lane. He used to teach my younger brother. He left in March or April 1908. Police searched his room in May. Papers, arms and ammunitions were found all in a box which he brought one day. The box was like Ex. 1447.

P. W. 169. A. P. Elloy.—Ex. 1050 is a telegram sent to office for delivery. I transmitted the message to Benares.

P. W. 170. Patandin Tewari.—Post-man, Baghbazar office. I delivered letters to No. 32 Muraripukur Road, to Barin Ghosh, Upen and Poresh. I knew Barin as Sukumar. The Babu used to read, write and sit. I did not see Bejoy or Bibhuti there.

P. W. 171. Panna Lall Brahmachari.—Sub-Inspector, attended a political meeting at Chetla on 8th April 1908. Upendra

Brahmo, a lawyer took the chair. Arabinda spoke. Reported the meeting Ex. 90. I wrote search-list at the search of Bijoy Bhattacharya's house on 1st July. Bejoy not arrested that day. I remember looking at a book like Ex. 1210. That day I did not know there were any formulæ for bombs in the book. No discussion about any formulæ took place there. Did not tell Bejoy that we would come again next day.

P. W. 172. Pann.—Worked at a garden next to No. 32. Saw people there. Recognise Barindra

P. W. 173. Sk. Mobarok Hossain.—Knew Hem Das' house. Lived near it. Saw men there. Can't recognise any.

P. W. 174. J. W. Turner.—Inspector of Explosives. Took yellow scrapings from the Engine of the L. G.'s train at Naraingarh and also from the rail and made them over to Major Black.

P. W. 175. Saroj Kumar Mozumdar.—Called to prove certain telegram connecting Bhaba Bhushan Mitra—Court disallowed.

P. W. 176. Durga Das Dhar.—Sold 2 bowls on 8th Baisak 1315 like Ex. 392. My shop is at 210 China Bazar.

P. W. 177. Khemur—Dharmasala Choudhidar.—Muzaffarpur. Ex. 73 is Khudiram's Photo. Ex. 31 and 32 are photos of his companion who stayed at Dharmasala and were there on the day of the murder of the two ladies.

P. W. 178. Sk. Methu.—Carriage-driver. I drive carriage No. 366. Once drove a man from Shambazar to Raja's Street, Sovabazar. Another man took down my name and number.

P. W. 179. Ram Lal Upadhyay.—Head Constable. Khudiram Bose distributed pamphlets at Midnapur Exhibition of 1905-06. I arrested him but was rescued by Satyendra Bose and others.

P. W. 180. A. C. Armstrong.—Deputy S. P. Nagpur. Searched for Balkrishna Hari Kane but he could not be found. He was produced on 20th July 1908 by Professor Jones of Morris College. I arrested him and sent him to Calcutta. He went voluntarily to Mr. Jones.

P. W. 181. Priya Nath Mookerjee.—S.I. Reported a meeting at Bendon Square on 15th Dec. 1907, Aravinda and Samsundar suggested going to Surat to break up the Congress. Reported another meeting on 14th Sep. 1907 at College Square where Leakut Hossein presided and Probhas (id) and Lalit Ghosal spoke. I searched 41 College Square on 12-12-08 and found Ex. 1473/1 and 1474/1. Arabinda did not speak. His silence showed approval. Notes marked Ex. 103. Arabinda spoke in English. Some one else reported it. I did not listen closely.

P. W. 182. N. Sen.—Deputy Magistrate—On 10th June there was an identification in Alipur Jail. 28 accused and 26 prisoners

were mixed up. Witness Bhubon Das picked out Hem Sen and Purna Sen. Bhubon did not give the names.

P. W. 183. D. Baker.—Manager, "The Englishman." In the issue of the paper of 4th Dec. 1907 there is a paragraph that L. G.'s departure from Cattak had been delayed till the 5th inst. Ex. 1010 is a copy of the issue with the para missing.

P. W. 184. Rajendra Ch. Shastri.—Translator to Government. Translated certain issues of *Jugantar* e. g.—

18th March 1906	...	"Suchona" or Introduction	Ex....	1307	1—2.
15th April	..	"A nation's power consists in the strength of its youngmen"...		1308	1—2.
29th April	..	"What is the duty of the people towards an oppressive Ruler"	...	1311	1—2.
22nd ..	..	"Admission of Error" and Awakening of power by patriot's blood"	...	1309	1—2.
13th May	..	"Conflict and Enmity"	...	1310	1—2.
27th ..	..	"A marhatti Novel in Jugantar"		1312	1—2.
17th June	..	"Truth about the essential character of the era"	...	1313	1—2.
24th ..	..	"What is wanted in Bengal"	...	1314	1—2.
1st July	..	"The Shivaji Festival"	...	1315	1—2.
15th ..	..	"Truths about the characteristic features of the era." "Chattra Bhandar Id."	..	1316	1—2.
29th ..	..	"A bit of the History of Rungpur"	...	1317	1—2.
5th August	..	"The National or indigenous Council of Education"	...	1318	1—2.
19th ..	..	"Release of the Editor of Bhalu" "The National Council of Education" "whether council succeed or not depend upon the student population"	...	1319	1—2.
		Prospectus of Chattra Bhandar		1320	1—2.
26th ..	..	"Organisation of Bands"	...	1321	1—2.
14th Oct.	..	"Free Hindi School" "Tying the Rakhi Thread." "There is retaliation for oppression" "Bejoya"	...	1322	1—2.

21st Oct.	„	... “War is the order of creation” “Jugantar’s National School Hostel”	... 1323/1—2.
18th Nov.	„	... “Past and Future”	... 1324 1—2.
2nd Dec.	„	... “Struggle for Independence”	... 1326 1—2.
13th Jan. 1907	„	... “Truth about Revolution”	... 1327 1—2.
3rd Feb.	„	... “Building up of Public opinion”	1328 1—2.
3rd March	„	... “Truth about Revolution,” Es- tablishment of Swaraj	... 1329 1—2.
7th April	„	... “Our Present Duty”	... 1330 1—2.
16th Nov.	„	... “Ghosts’ Nest”, what is the path”	... 1332 1—2.
11th April 1908	„	... “Welcome unrest” present problem	... 1336 1—2.

I also translated articles from the *Sandhya*. The following are issues of them.—

6th May 1907	„	... “Mother Kali’s Bomb”	... 1338 1—2.
14th „	„	... “Pick up Lathi „	... 1339 1—2.
15th „	„	... “Band of Volunteers. Are you dead”	... 1340 1—2.
16th „	„	... “Worship of Mother Kali in every village”	... 1341 1—2.
17th „	„	... “Feringhi’s war-drum”	... 1342 1—2.
15th June 1907	„	... “Beware while there is yet time”	... 1344 1—2.
24th July	„	... “Wherein lies our strength”	... 1346 1—2.
28th Augt.	„	... “Butcher of a Magistrate at lalbazar”	... 1349 1—2.

The following are translations of headlines of articles from the *Navasakti*.—

7th August 1907	„	... “How will the country be roused”	... 1351/1—2.
28th Dec.	„	... “Reconciliation is impossible”	1352.1—2.
26th „	„	... “Be warned even yet”	... 1354 0—2.
12th Nov.	„	... “Power of the people”	... 1360 1—2.

I also translated the book in four parts “Mukti Kone Pathay”—“which way lies salvation.” Ex. 1479/1-4. Original book Ex. 1480.

P. W. 185. I. P. Carroll.—Traffic Inspector B. N. Ry. Produces Time Table for 1907-08.

P. W. 186. Surat Chandra Bhattacharya.—Produces Time Tables of E. B. S. Ry. for 1907-8.

P. W. 187. Charles Christian.—Produces Time Tables of E. I. Ry. for 1907-08.

P. W. 188. Sheik Nawab Jan.—Lived near the garden, 32 Muraripukur. Saw men coming and going there. Can't identify any.

P. W. 189. Sheik Ismail—Same as last witness.

P. W. 190. S. I. Chaturvedi R. A. Sarma.—On 30th April 1908 after the Muzaffarpur murder I was deputed to go to Mokama. I dropped two constables at Waini station to arrest two men if found. I stayed at Mokama on 1st May. On 2nd at 10-30 A.M. a train came from Mokama Ghat (that place has connection with Muzaffarpur) and S. I. Nanda Lal Banerjee (since murdered) and another man alighted from the train. Nanda wanted to arrest him. He bolted but was chased and caught by constable Shib Sankar. The man was Dinesh Chandra Roy. He then shot himself. Ex. 1045 is his revolver. He had a ticket from Muzaffarpur to Howrah—Ex. 1045 A.

P. W. 191. Alijan.—Driver of hackney No. 494. I once drove it from Gopi Mohan Dutt's Lane to 134 Harrison Road in Baisak. The Babu who hired brought out tin boxes Ex. 572, 573 from the house in G. M. Dutt's Lane. Then he brought a bag like Ex. 659 and sat inside. Two Babus came out from 134 and took in the Boxes. When I drove a little another Babu asked where my stand was. Ulaskar brought the boxes with Asoke Nundy. The latter sat on the dickey box.

P. W. 192. S. I. Sarat Pal.—In January 1908 was enquiring into the Naraingarh incident. I got some information about a Secret Society. On 10th April I was watching the garden. Three men I followed from there to Hem Das' house. Then they went to Howrah Station. They started by the Loop passenger at 5-30 P.M. I and others followed in the train. They got out at Mankandu. I and Suresh Ghose followed them. One of the three separated and I followed him to Chandannagore. In the dark I missed him. He was Barindra. Next day while returning I saw two of them entering the train at Chandannagore. They got out at Serampur, so did I. They hired a carriage and I did so and followed to Narendra Gossain's house. On the 17th April, I gave names of Barindra Ghose, Sailendra, Dindoyal and Abinash as members of the Society. Barindra and others I followed also from the garden to No. 4 Harrison Road and then to 23 Scott's Lane. Another day two men brought a bullock cart to Hem Das' house, loaded same with 3-4 tin boxes, a wooden box, a hand bag, a leather box and something in a basket. One of the two who looked like a Madrasi went with the cart to 15 Gopi Mohan Dutt's Lane. Two or three men came out, unloaded and took

in the things. Identifies, Sailendra, Ullaskar, Dindoyal, Upendra, Bibhuti, Barindra, Abinash, Bejoy Nag, Krishna Jibon, Nirapodo, Indu Roy, Hem Das, Paresh, Arabinda; I knew also Narendra Gossain. Got information about Secret Society from an informer in Calcutta. My memory is failing because I am suffering from paralysis. I kept no notes of the watches. I spoke from memory about the shadowing.

P. W. 193. Srimanta K. Das Gupta.—Deputy Magistrate. On 24th July 1908 once went to Alipur Jail to witness identification of accused. 30 persons were paraded in a line. S. I. Suresh Ghose went to identify. He picked out Balkrishna Hari Kane.

P. W. 194. Binode K. Gupta.—Inspector. On 2nd May was present at 48 Grey Street and arrested Sailendra and Abinash downstairs; Aravinda was arrested upstairs. I saw the "Sweets Letter" first on 4th or 5th May at Ryod Street when we were examining documents with Mr. Denham.—Ex. 295. Papers and documents of other places were brought also there and examined. All documents found at 48 were with Mr. Creagan at Jorasanko Thana from 2nd to 4th May. On 10th May I searched Subodh Mullik's house, 12 Wellington Square. *Bande Mataram* was then printed at 21 Creek Row 23 houses from No. 12. I found Ex. 1100—1123. I saw Ex. 1130 and 1131 among the garden Exhibits. I heard Probas delivering violent speeches. I was present at several searches of the offices of *Jugantar*, *Sandhya*, *Narasakti*. It would not be correct if Creagan had said that he kept the documents till 11th May. The findings of garden and No. 15 were kept at Park Street Thana.

P. W. 195. Nanda Lal Bagchi.—Deputy Magistrate, Alipur. Present at the identification in Jail by Alijan on 18th May when he picked out Asoke and Ullaskar.

P. W. 196. Narain Chandra Bhattacharya.—Bengali Translator to Government. He translated several articles from the *Jugantar* and *Sandhya*.

P. W. 197. G. C. Denham.—D. S. P. Came into touch with the Exhibits of this case from 4th May. Began examining them—first documents from 302 Harrison Road, then from the garden, 15 G. M. Dutt's Lane, 38 4 Raja Nava Krishna Street, then from 134 Harrison Road, then from 48 Grey Street at 25 Ryod Street. I made a full copy of Ex. 295:—

"BENGAL CAMP, NEAR AJITS."

27th. December 1907.

"DEAR BROTHER,

Now is the time. Please try and make them meet for our conference. We must have *sireets* all over India ready made for emergencies. I wait here for your answer.

Yours Affectionately,
BARINDRA KUMAR GHOSE."

The letters were in packets which were numbered, not the letters. Not possible to say from notes of the dates of my examination. Findings and supplementary searches of the garden were kept in Waterloo Thana. Some 7 pages of my note-book are torn. They were blank and at the end I had no paper and wanted some.

It would be impossible to say from my notes the dates on which I examined documents of any particular search. I examined those of No. 15 at 25 Ryod Street. Besides garden documents I examined those of Nos. 134 and 384 at Park Street. In my book the examination of 48 Grey Street documents run from top of one page to a portion of the next. Then there is a break of 8 leaves. Then again it continues for nearly 9 leaves. The entry about "sweets" letter is in this portion. Portions of entries about No. 48 are after those of No. 134. Some seven pages of my note book are torn.

P. W. 198. Rakhal Das Roy.—Accused Purna is my sister's son. I never saw Purna at the Chatra Bhandar at Midnapur.

P. W. 199. Jogendra Chandra Mondal.—Bolai Ganguly Sub-Inspector took lease of No. 24 G. M. Dutt's Lane from my aunt. Last Baisak one morning I saw a man (*i.e.* Bhababhusan) going out of No. 15.

P. W. 200. Anukul Chandra Roy.—Inspector. Tendered, but not cross-examined.

P. W. 201. Inspector Kunjo Behary Biswas.—On 23rd. June searched the house of Surendra Nath Mukerjee at Bankura. Ram Das Chakraborty lived in that house. Hasadanga is 24 miles from Bankura. Narendra Gossain's father has property there. Revolver Ex. 863 was found in the search. Ex. 1063-64 were also found. On Surendra's hand was a tattoo mark of a sword and trident like the *Jugantar* crest. Ex. 1065 is a plan and after investigation I found it represents village Gopalpur and Mohout Kirtibash's house.

P. W. 202. Inspector Samdul Alam.—Assisting the Prosecution throughout. Ex. 231 was a box containing 200 books. Ex. 1408, 1409, 1411 1412-16, 1418-20, 1422-23, 1425-31 were in it. Ex. 541 was originally a bundle of letters. Ex. 1433 and 1434 were in it. In bundle Ex. 538 were Ex. 1436 and 1437. Ex. 1235-1238 were from garden from Ex. 237. The search property from Bejoy Bhattacharj's house were taken to 3 Didar Buks Lane on 1st July and I found a red note book containing formulae for explosives and the name C. K. Chakraborty. I went to Mr. Denham and we decided to arrest him next day.

Cross Examined by Mr. Dass :—

I was present throughout the enquiry against both batches before Mr. Birley. I was deputed especially to instruct the solicitor

to the crown. I did instruct him, both in the lower court and here. I also instructed him out of court. I have been present throughout the trial of this court. I know Babu Bijoy Krishna Bose, Pleader, since I was engaged in Mr. Birley's court. He was a pleader engaged there as well as here. I remember when sanction was put in before Mr. Birley on the 18th. I don't remember that Bijoy Babu objected to the sanction on the ground that cognisance had already been taken: there were so many objections throughout. I have not the slightest recollection about it. I don't think the matter was ever discussed: not with me, at least. Ques. With regard to Indu Bhusan, what is the case for the Crown: when did he join the conspiracy? (Objected to. Disallowed). Ques. When do you say that Upendra Nath Banerji joined the conspiracy? (Objected to. Disallowed). (Mr. Dass proposes to put an exactly similar question with reference to each of the accused. (Objected to. Disallowed). Ques. Is it the case for the Crown that all the accused joined the conspiracy at the same time? (Objected to. Disallowed). Ques. Is it your case that the accused joined the alleged conspiracy on different occasions? (Objected to. Disallowed). Ques. I mean—is it the case for the Crown? (Disallowed). (Shown Ex. 12). Ques. Did you instruct the legal advisers of the Crown as to when the various persons joined the conspiracy? (Disallowed). Ques. Did you instruct the Solicitor or the Counsel as to whether the accused joined at the same time or at different times? (Disallowed). (Mr. Dass asks if he may ask any question as to the instructions which he gave, or what the case for the Crown is. He is told he may not). I have not a list of the persons alleged by the prosecution to be conspirators. I don't know if such a list was ever made. I did not give any instructions to anyone for such a list being made. Ques. Have you any objection to give the names of persons alleged to be conspirators? (Disallowed. He can only speak as to his own ideas, and those are irrelevant). (Shown Ex. 12). Ques. Taking the statement as a whole, did you give any instructions as to whether the various statements contained in it are true or false? (Objected to. Disallowed). Ques. Can you say if the statement is true or false? Ans. I don't know. (Passage from confession read—I thought of taking men arrested"). Ques. Is that true or false? Ans. I can't say what he thought. I don't know if he began to collect the band which was arrested. I don't know whether he started the "Jugantar" with Abinash and Bhupendra. Ques. Do you adopt that as part of the case for the prosecution? (Disallowed). (Mr. Dass wishes to know if he can ask questions as to whether various statements in the confessions are part of the case for the prosecution. He is told he cannot). Ques. How many overt acts do you allege on behalf of the prosecution that the accused persons committed? (Disallowed). Ques. Or which

are they? (Disallowed). Ques. Is it the case for the Crown that everyone of the accused is guilty of all the offences charged, or that some one guilty only of the substantive offences and some of attempting or abetting? (Disallowed).

There was a question of jurisdiction raised before Mr. Birley and he said that he had jurisdiction and had passed orders transferring the case to his file. I can't say to what order he referred. (Mr. Dass here repeats the question and it is disallowed). I don't know that various applications for bail were made before Mr. Birley. The keys of the boxes, as also of the Court-room, were kept by Anukul. The key of the box was never for a moment kept with a constable. There was no constable of the name of Tewari. The constable to whom you referred, was Mahammad Shukur: he comes to Court every day, being an Orderly to the Court-Sub-Inspector. This is he (shows). It is not a fact that the boxes were opened in all cases in my presence, when the Mukhtars or Pleaders for the Defence wanted to see documents. In some cases, I was there. Ques. Is it not a fact that in your presence the constables sometimes opened it? Ans. If by "in your presence" you mean—under my supervision—I deny it: but in some cases, the Court-Sub-Inspector made over a key to open the box in his presence. On many occasions Anukul and his Assistant Binod brought out Exhibits to the Defence Pleaders. Whenever Sukur opened the box, he did it in the presence of one of the Court-Officers. I always saw the key made over to Sukur by Anukul, when Sukur opened the boxes in my presence. Whenever I saw Sukur opening the box, I always saw him get the key either from Anukul or Binod. I swear, I have already taken my oath. Anukul never went out in connection with other cases to my knowledge: he might have. He was absent for 2 or 3 days when ill. I don't remember how many days, it was a few days: may be 6 or 7. I think Anukul was at Court on the day the approver was shot. He must have been there. The day on which the approver was shot, Binod left office in the afternoon and was absent the next day. I swear Anukul was in Court on 31st August and 1st September. (Mr. Das proposes to use petitions put in in Mr. Birley's Court with his orders on them. Mr. Norton objects. Reference may be made to them with the orders on them: the orders prove themselves, but it must be clearly understood that the petitions are no proof of the facts which they state. The Defence must give notice to the Crown of the petitions to which they propose to refer). (Mr. Dass proposes to put in the deposition of witnesses Nos. 141, 142, 147 of the Magistrate's Court to show dates. Mr. Norton says he will admit them to be Purna Chandra Biswas on 10th July, 13th July, Sashi Bhushan on 13th July, and Chandi Charan Mukherji on 14th July: in the case of the first batch. As the dates are admitted Mr. Dass does not want the de-

positions in). I got instructions from Mr. Denham about the various documents in this case from the day the evidence began in the Lower Court up till now. I got them at his private room No. 1, Kyd Street. I examined documents in his presence : during the time mentioned by me. That was in Mr. Birley's Court and also in Mr. Denham's room. By 'Court' I mean the room in which Mr. Birley sat to hold his Court, and also his chamber. In the Court room it was not always when the case was going on but also in his absence : but with his permission and in presence of one of the Court officers, Anukul or Binod. In the other room it was in the presence of Mr. Withal, Mr. Denham, and one of the Court officers, Anukul or Binod.

P. W. 203. Ramkumar Singh, Inspector.—I searched on 23rd and 24th June, 1908 the house of the Raja of Ambikanagore in Bunkura. Palarum Chatterjee was his servant. Both of them were sent up but for the murder of Narendra Gossain, case was withdrawn. He was the principal witness. Surendra Mukerjee and Ramdas were sent up along with them.

P. W. 204. Judh Nath Haura.—Daffadar. I know Purna Sen. In Bhadra 1314 Purna came to Chaudpur and stayed 2-3 days. On the last day of Bhadra he went to Nadia where his brother is a police Sub-Inspector.

P. W. 205. Bakar Ali.—Inspector. I knew Hotilal Varma. He was tried before the Sessions Judge of Aligarh under sec. 124 I. P. C. He is in jail now. I searched his house and found 6 books Ex. 1503 1-6.

P. W. 206. Narain. Inspector, Bombay. Saw Arabinda in Bombay in January 1908. He stayed 4-5 days. On 15th Jan. he delivered a speech at Girgaum. 5000 people were present. I made short notes and then sent a Report Ex. 80. On 19th delivered another speech and spoke about *Swaraj*, Swadeshi, Boycott and National Education. Ex. 357'a is a photo of G. S. Khaparde, Pleader of Amravati. I took no notes of the meeting of the 19th.

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On the 4th March 1909 the Crown counsel closed the evidence. The accused were then examined by the Judge to explain the evidence against them. Almost all the accused declined to answer the questions put to them and contented themselves by merely stating that the lawyers on their behalf had their full instructions to argue and explain the evidence.

Mr. Norton then began his argument which he finished on the 20th March. The various defence counsel and pleaders then addressed the Court—Mr. C. R. Das for Aravinda taking eight days. Their arguments occupied the Court till the 13th April. As both Messrs Norton and C. R. Das argued the whole case in full before the High Court in Appeal their arguments are not given



Mr. C. R. Doss, Baptist.

here, except only a portion of Mr. Das' relating to the case against Aravinda Ghose (who was acquitted and therefore whose case was not again referred to in the Appeal Court).

Mr. R. C. Bonnerjee referred to certain newspapers which had trampled British justice by calling the accused as "Bengal Anarchists" while the case is subjudice. He submitted the confessions were induced by promise held out by Inspector Ramsadai Mukerjee, that they were inadmissible and even if admissible they did not prove the charges drawn up against the accused. Thinking of a "far off revolution" is not waging war against the king, and collection of "eleven revolvers, four rifles and one gun" does not look like preparation for waging war. The case had done more harm than good to the country. Barin by keeping arms in the garden did not commit any offence as he was a British born subject—born in England. When a person has committed an offence he cannot be charged with concealment of the design to commit that offence as well. An attempt to wreck the L. G.'s train is not waging war against the King. Barin said they made no other plans to kill any one else. Was this waging war or attempting to do so? A plan to punish officers for supposed grievances is not waging of war. Barin said he never thought political murder would bring independence. Taking the prosecution case as a whole if any case was made out it was only a case under sec. 122 against Barindra, Upendra and Ullaskar and against no other. Regarding the searches, what was the use of hearing search witnesses, men who could not sign their names even but were said to have put cross marks. Major Black was no authority on explosives, but only a chemist and his evidence about bombs was worthless. The position of the garden, its accessibility from all sides, the open manner in which they lived there rendered it impossible that ammunitions were made there. Mr. Bonnerjee then dealt with cases of the accused he was representing viz., Barindra, Upendra, Indubhusan, Bibhuti, Paresh Moulik, Hrishikesh, Sudhir Sirkar, Nirapodo Roy and Ullaskar Dutt.

Mr. C. R. Das then addressed the Court on behalf of Aravinda Ghose. The following are extracts from the same :—

MR. DASS'S ADDRESS.

May it please your honor, and gentlemen assessors,—It is a matter of congratulation for us all, that at last this trial has come to a close. It is especially a matter of congratulation for the prisoners at the bar because they have been in jail for the best part of a year and the time has now come, gentlemen, for you to consider the evidence which has been placed before you to find out whether the charges brought against them by the prosecution

are true or not. I shall have to deal with the evidence in this case at some length but before I do that I must draw your attention to certain features of this case which are very unusual. I believe Mr. Birley said in his evidence that he took special, or rather unusual interest in this case because it was an unusual case and you will find throughout the evidence in this case that it has been conducted on very unusual lines. I am not referring to what has taken place here so much as to what took place before the committing Magistrate before the case came here. The seeds were sown there. You will find that Mr. Birley made up his mind to try this case on the 3rd May, the accused persons being arrested on suspicion. The evidence is that the police connected some of the accused at any rate with bombs and with conspiracy; whether that evidence is true or false is another matter. It is their version that on the 2nd May these accused persons were arrested on suspicion and taken to the thana and kept in the lock up. They were not produced before the Magistrate at all unless of course they say the Commissioner of Police is a Magistrate. We find on the 3rd May Mr. Birley made up his mind to try the case. They were produced before him on the 4th May. We find that Mr. Birley went to the house of a police officer--a very high official no doubt--and there he read some of the confessions alleged to have been made by the accused persons to the police. I say this is an unusual feature, a feature we have not come across in any case in any Court before now. Having done that what does he do. On the 4th May some of the accused persons were produced before him. He forthwith proceeded to examine them. The case for the prosecution is that he recorded the confessions of these accused under a particular section of the Code. With regard to that I shall deal later and you will find from those questions put by Mr. Birley that his object of enquiring was as to what other persons were implicated in certain things. That is done on the 4th May. On the 3rd May he makes up his mind to try the case. On the 4th May the accused is brought before him and before a scrap of evidence is placed before him--he proceeded to take the statement of the accused persons by putting questions and recording their answers. After that you will find that he dealt with the applications for bail; a great many were put in--almost all the accused one by one made an application. They were all rejected. Later on May 18th evidence began before Mr. Birley with the examination of Mr. Frizoni. On that day you find objections were taken to his jurisdiction. You find the next day Mr. Birley in the order sheet is referring to his order of the 3rd May to show how he came to take up the case himself. There is another unusual thing which I have to mention.

After Frizoni was examined in part on the 18th May, on the 19th he made an order. I shall read it (reads). There is no record of that evidence here at all, but Mr. Birley thought that some

objections may be put forward before him to the effect that he had taken cognizance of the case without the proper sanction of the Court ; so he proceeds to re-examine him to make the proceedings regular according to his opinion (reads). Is that the manner in which a Magistrate is to record evidence? My submission is that the object of that entry here in the evidence of Frizoni is to get over what he thought he could not get over, namely, the legal objection to his jurisdiction.

(Mr. Dass read the order sheet). Therefore it is perfectly clear that before the 18th May there was no sanction put up before him on any authority and it is perfectly clear that even when he got sanction he did not examine the complainant as he was bound to do under the law. I submit all these proceedings are of a very unusual character. These proceedings are not warranted by anything in the Code of Criminal Procedure or under any law. I can quite understand my friend's contempt for the Code, but I venture to submit that the Code applied even to a State trial and more so in a trial where persons are accused of the most serious offences known to the law. I shall show you, when I survey the evidence and put it before you that ninety per cent of that is inadmissible here and ninety per cent of it throws no light upon the charges which these persons are brought here to meet. Not only is public time and money wasted, but all that mass of evidence tends, and must necessarily tend to prejudice the accused.

In a case like this, the first thing to do is to prove that a conspiracy did exist and the next thing is to connect the particular persons with the conspiracy. What has been the method followed by my friend? Whether he discussed oral evidence or documentary evidence he started with the assumption that these persons are guilty. He assumed their guilt and then tried to connect them with the evidence. He reads a letter and finds a reference to A. G. What is his argument? Does he refer to any proof to show that A. G. stands for Arabindo Ghose? No. His argument is "I tell you that is Arabindo Ghose." In order to try the accused persons you must start with the assumption that they are guilty and after that to look into the evidence connecting them.

Take the Chattra Bhandar. Arabinda Ghose is a conspirator because he is connected with the Chattra Bhandar. I submit that is entirely a wrong procedure to adopt—a procedure which has never been adopted before in any Court of Justice. He ought to have told you that you must proceed on the assumption that these persons are innocent of all the charges brought against them and if by perusing the evidence you come to the conclusion that the evidence is unmistakable proof of their guilt, then and then only can you convict them.

There is another point—that is with regard to Arabindo's

domestic letters. Read those letters and you will find that they throw no light on the charges against these accused. The sanctity of his private correspondence has been wantonly and improperly violated. Was it for the purpose of proving to you that these men are guilty? I submit not. There is nothing in those letters from beginning to end which throws a light on the charges for which these men are being tried. There again my friend's argument was "don't read the letters as they stand but read between the lines." That is to say although the letters don't support the conspiracy and don't suggest any offence, yet you must not be deceived by them. Don't you know Arabindo is guilty? Don't you know he is connected with bombs? Don't you know he has waged war against the King? Take that for granted and you find him guilty." His movement in Baroda is stated to be in connection with bombs. His articles in the *Bande Mataram* are referred to. There is no evidence at all reliable which is put forward to show that he is responsible for every article in the *Bande Mataram*. The articles breathe the idea of freedom. My friend began his speech by saying that those were ideals which no Englishman would quarrel with. Those articles I repeat, if they show anything, show that Arabinda Ghose was preaching from beginning to end that ideal of freedom which, we were told over and over again, no Englishman would quarrel with. Does not that argument involve the same fallacy to which I referred, namely that you must assume that Arabindo Ghose was in the conspiracy and after starting with that to read the articles. Here although he preaches those ideals, you must read into those articles bombs and conspiracy to warfare. Throughout the whole course of his argument the same fallacy was repeated over and over again.

I have already told you that the correspondence of Arabindo has been placed before you; in fact, gentlemen, his whole life has been laid bare before you. My friend's contention is that on that evidence which deals with his inner life you will see signs of conspiracy and waging war. I shall confidently take my stand upon that very correspondence and material. I shall show you that during the whole life of Arabindo, beginning with his first work up to the day of his arrest, he was actuated by a noble ideal. I shall take you through the correspondence dealt with while he was at Baroda, his utterances whether in the press or on the platform, and I shall show you that there is not one single suggestion of any conspiracy to wage war against the Government. He has throughout been actuated by a nobler idea. You will find from the middle of 1904, 1905, 1906, and almost up to a few days before his arrest that he was actuated by that noble idea. It will not be out of place here before I come to deal with the particular points in the case to give you a short sketch of those ideas. My friend throughout the whole course of his address did not hesitate to

scoff at it, but that is a matter of no concern to me. So far as the nation was concerned he preached that lofty ideal of freedom. So far as the individual was concerned his idea always was to go there himself and look for the god-head within. It is a familiar ideal of our country. It is difficult for those not familiar with it to understand it. But to you, gentlemen, it is familiar.

The doctrine of Vedantism is that man is not dissociated from God: that is to say, if you want to realise yourself you must look for the God within you. It is within your heart and within your soul, that you will find that God dwells and as no man can attain to his own salvation without reaching to that God that is within you; so also in the case of nations: without any national question arising—no nation can attain this unless it realises the highest and noblest and the best of that nation. As in the case of individuals you cannot reach your God with extraneous aid, but you must make an effort—that supreme effort—yourself before you can realise the God within you; so also with a nation. It is by itself that a nation must grow; a nation must attain its salvation by its unaided effort. No foreigner can give you that salvation. It is within your own hands to revive that spirit of nationality. That is the doctrine of nationality which Arabindo has preached throughout and that was to be done not by methods which are against the traditions of the country. I ask your particular attention to that. It was not Arabinda's philosophy that salvation was to be attained by methods inconsistent with the whole history and traditions of the writer and therefore when you find Arabindo leaving Baroda and coming to Calcutta you find that the doctrines he preaches are not doctrines of violence but doctrines of passive resistance. It is not bombs, but suffering. He deprecates secret societies and violence and enjoins them to suffer. If there is a law which is unjust and offensive against the development of the nation, break that law by all means and take the consequences. He never asked you to apply force in a single utterance of his either in the press or on the platform. If the Government thought fit to bring in a law which hinders you from attaining that salvation, Arabindo's advice is to break that law if necessary in the sense of not obeying it. You owe it to your conscience; you owe it to your God. If the law says you must go to jail go to jail. That was the cardinal feature of the doctrine of passive resistance which Arabindo preached. Is not the doctrine of passive resistance preached throughout the world on the same footing? Is it peculiar to this country—this movement which has met with such abusive language from Mr. Norton? Have not the people of England done it over and over again? I say that this is the same doctrine that Arabindo was preaching almost up to the very day when those handcuffs were put on his hands. He was oppressed with a feeling

of disappointment, because his country was losing everything, having lost their faith. Therefore you find whenever he preached freedom he brought out that feature clearly. He says, believe in yourself ; no one attains salvation who does not believe in himself. Similarly, he says, in the case of the nation. If the nation does not feel that it has got something within it to be free to attain that salvation then there is no hope for that nation. Accordingly we find Arabindo preaching "you are not cowards, you are not a set of incapable men, because you have got divinity. Have faith in you and in that faith go on towards that goal and become a self-developed nation."

(Mr. Das dealt at very great length with the legal objections, characterised the proceedings a nullity, called attention to the sanction and the irregularities and illegalities of the trial. As all these points were again urged by him in appeal before the High Court, they are omitted here.)

I now deal with the evidence referred to by my learned friend to show the inner work of Arabinda from 1902 down to the day of his arrest. You will find, gentlemen, that up to 1902 or 1903 there was no connection between Barin and Arabinda.

You will find it is proved by the evidence in this case that Arabinda went away to England. After his return he was posted at Baroda. Barin at that time was being educated at Deoghar. From there he went to Dacca to study for the F. A. After that he went to Patna and thence he went to Baroda. We find him in Baroda, in 1902 and 1903. My learned friend's argument is that it was during his stay in Baroda in 1902 and 1903 that the seeds of revolution were sown in the hearts of Barindra by Arabinda. Barin says in his statement that he came away from Baroda sometime in 1903 and began to tour round the different parts of the country and preached the cause of independence. My learned friend thinks this to be an ideal with which nobody would quarrel and then with regard to this ideal he says that the seeds of discontent were sown at Baroda.

First of all you will find, gentlemen, from the evidence of Sukumar Mitter and Padoo Tewari that there was no connection between Barin and Arabinda before their meeting at Baroda in 1902 and 1903. Therefore as long as Barin was at Deoghur you find from the evidence of Sukumar and Padoo that the two brothers did not meet. Barin passed his Entrance Examination from Deoghur. He read F. A. at Dacca and then went to Bankipore and then eventually went to Baroda. The two brothers first met at Baroda. After a time Barin left Baroda and engaged himself in preaching the cause of independence of the country. From that my learned friend argues that the poison must have been infused into Barin by Arabinda.

The best way to test that would be from what Arabinda himself says at that time when they were together at Baroda in 1902 and 1903. There are only three letters exhibits 292-1, 292-3 and 292-5. I am not aware of any other letters of that period. Exhibit 292-1 is a letter dated the 2nd of July 1902. (Reads the letter addressed by Arabinda to his wife). How do you find sedition or waging of war against the Government in this letter?

With regard to the reference to Jyotindra I shall deal later on. Arabinda wanted the horoscope of his wife to show to Jyotindra who was an astrologer in the Baroda service. I want to deal later on with Jyotindra and see if he was the accused who has since been discharged. It was in 1902. That does not help the case for the prosecution at all. Amongst these letters I have just mentioned there is another letter dated the 20th of August 1902. This letter refers to his promotion and so on. There is nothing important in that letter except that soon before that time Arabinda considered himself a strict member of the Hindu Society. Those are all the letters which we get and which we preserved to give us an idea as to what the trend of his mind was in 1902. After that as I have told you Barin came away from Baroda and was engaged in preaching the cause of independence. He goes back sometime in 1904 or 1905. It is difficult to find out exactly when. It is at that time that Arabinda complains about Barindra. You will find that from exhibit 286-4.

If you couple exhibit 286-4 with the evidence of Sukumar you will find that Arabinda complained that Barindra would not take service. It is clear that Barin at that time went back. Arabinda asked him to accept service but Barindra refused to work. This letter was written on 22nd October 1905. This is not in order of time. This is the last letter of that period, before Barin goes to Baroda. Arabinda complains, (Reads) "Barin is never quiet, he will not accept any service." Therefore we see, gentlemen, that Barin goes back. It must have been that Barin's people told him to task for doing nothing and asked him to take some post to earn his livelihood. Arabinda complains "he is not quiet, he wants to go out for the service of the country." That also we find in Sukumar's evidence. That shows clearly the relation between Arabinda and Barindra.

Then, gentlemen, you have got to consider Arabinda's own views during that period. The career which Arabinda sketched out in that letter is that to which he stuck up to the day of his arrest. I refer you to the letter of Arabinda to his wife, dated 13th August 1905. At that time Barin was living at Baroda. I have shown from the letter of 20th October, 1905, that Arabinda was complaining about Barin. So Barin was at the time at Baroda. The seeds of revolution were again sown. It is better to find out what Arabinda's own views were about the time. These

letters are exhibits 286-1 and 286-2. I would prefer to read to you the Bengali letter. You must remember, gentlemen, that at that time Arabinda did not acquire a sufficient knowledge in Bengali. It is written after Sanskrit. (Reads). You remember gentlemen, that *Andha Rajar Mahishi*. This allusion refers to queen *Gandhari* who used to blindfold her eyes as her husband *Dhritarashtra* was blind. (Reads.) Gentlemen you see that Arabinda describes himself as *Pagal* (a mad man) and tells his wife to settle as to what path she would follow. He makes the reference to *Gandhari* and expresses his hope that inasmuch as there is Hindu blood in her vein she will follow the course which he has taken up. The life he sketched out here he followed literally. The man has spent all his income for the good of the country, for charity, keeping only that which is necessary for his bare subsistence. (Reads). The first great idea which he sets out in this letter is that he must regard himself as a trustee of all money that belongs to him. It is his duty to spend as little as possible for himself for the purpose that he may continue to live and to give the rest to God. How? By doing God's work, namely by feeding those who are hungry and by assisting those who are in need. It is then and then only that you can give back what you owe to God. If a man does not do it he is then a thief. It is not for his own selfish end. He is determined to lead that life. He will keep for himself only what is absolutely necessary for bare subsistence and the rest he will give back to God. The only way you can do that is by way of charity, by feeding the hungry and by rendering assistance to those who are in need of it.

The second great ideal to which he refers is he has got the conviction in his mind that it is possible to see God, not to see God in the objective sense, but according to Hindu religion to see God in his own mind. One can discover the Godhead that is within him. It is easy to scoff at this. But here is a man giving expression to his earnest longing to realise the Godhead himself. This is his second great ideal. There is another point and that is this. There is also in this letter a covered reference to *Guru* (spiritual guide).

Because you know, gentlemen, that when a Hindu brings himself under a spiritual guide, he never discloses the name of his "Guru" nor the fact that he has done it. That is part of the religion. Unless you get the permission of the "Guru" you cannot give it out even to your wife. (Reads) "*Jaibar Niyam dekhayache*" that is somebody has pointed out the rules of conduct which will help him to enter that path following which he can realise the God that is within him. Then he began to practise. That is to say he began to shape his life according to those rules.

Then he says "after practising them for one month, and realising the signs which the Hindu religion has said to be the signs of that

stage," "every body is entitled to that path. Unless you desire to enter that line you cannot get it. But it is within the power of every individual to attain that." In this letter he asks his wife to write to him whether she desires to enter this line or not, so that he may further correspond with her on that point. I ask you to remember this because you will find it is fully explained in his subsequent letters to which my learned friend also has referred.

Then he comes to his third ideal. Here he lays down the basis of his patriotism. (Reads). There again the idea is drawn from Vedantism. You know the doctrine according to Vedantism is that the whole world is a manifestation of God. Unless you realise that the world is a manifestation of divinity, as long as you do not realise within yourself that the world you see around you, the country in which you live are manifestations of divinity, then all these are unreal. They are unreal as long as you do not realise the association, the connection, between them and the absolute. But when you realise they are not separated from but are parts and manifestations of divinity, that very moment they cease to be unreal and become real. (Reads) "What do you think of your country? It is not merely forest, river, etc." To Arambinda it is the manifestation of motherhood. That is another aspect of divinity according to Hindu religion. His basis of patriotism is that you must so regard your country that you can discover and realise the motherhood of the country. You must so love your country that you can realise within yourself that it is another aspect of God. A man who believes in Vedanta can see clearly and finds no difficulty at all. That is the basis of his patriotism. You must realise the divinity in the country in which you live. Arambinda feels that nationalism has no place unless it leads to universal humanity. Unless nations develop in that way, the ideal of humanity can never be reached. I shall point out from article after article in the *Bande Mataram* that as the individual must live in the light of the society so the nation must live in the light of humanity without which the whole philosophy is meaningless absolutely. (Reads) He looks upon the country as the mother. As I have explained, that is another manifestation of God.

Then he says that his ideal is independence and the last line of this paragraph makes it clear. Some day or other, it will not be in his lifetime, this ideal will be accomplished. (Reads) "When the mother is oppressed what will her sons do? etc." A very curious argument has been based upon that. He says, how can you do that? you have got no guns, no swords. "It is my ideal," he says, "that the country should realise freedom some day or other." He explains it by his answer. How can you do it? "I am not referring to *kshatraty* but I am referring to *Brahmaty*."

(Reads). My learned friend's argument is that so far as Arabininda himself is concerned he will do the advising, but others will be left to bombs. Where do you find this in these letters? My learned friend's argument is on the whole of this sort that you must assume that Arabininda is guilty. Then you are to read the letters between the lines. According to my friend's contention, so far as Arabininda is concerned, he will apply the *Brahmatej* and make others to use the *Kshatratej*. If you read these letters you must come to the conclusion that he deprecates other forces. The only force upon which he relies and to which he appeals is the intellectual force. It is upon this force, he says, the future welfare of the country rests. He is not going to rely upon guns and swords. With all respect I submit that the suggestion of my learned friend is absurd. Anyone who reads the letters must come to the conclusion that the means which Arabininda suggests is not physical force but the force of character, the force of intellect; upon those forces the future of the country will be based. He says "Don't you think that physical force is the only force in the world, there is a higher force and that is intellectual force, the force of character. Rely upon that force." That is the means which should be employed for the deliverance of the country. It is not possible to put the construction upon the letter as my learned friend has done.

Referring to that part of the letter which says "If a demon sits on the breast of the mother what would the sons do?" Counsel said:—What is the meaning of that? It is only an analogy. He says that he regards his country not as merely a collection of fields, hills, rivers, and so forth but he regards her as his mother; then he says that he is only referring to the fact that the country is under subjection. He has used only a metaphor to shew that his countrymen are not to sit idle but to so act as to realise his ideal. The letter was not intended for publication, it was not an open letter to his countrymen; it was to his wife. (Reads) Does not it mean that regarding the fact that their country is in a wretched condition, it is far away from freedom, it is in bondage. So it is the duty of every man in India to stir himself to realise the ideal of freedom. His basis of patriotism is that he regards his country as mother. It is to him not a physical nonentity but is a concrete manifestation of divinity. His central idea is that the country is a concrete manifestation of divinity.

The regeneration of the country has to be brought about by forces of character and intellect and not by physical force. Then the next paragraph makes it clear.

You understand, gentlemen, what he means by saying "wife is the strength of husband". That attribute in Arabininda by which he realises the divinity is *sakti* and he brings that into relationship between a husband and wife and says wife is the *Sakti*. It is through her that he realises the higher relation of man and wife.

Referring to the sentence "will you utter the mantra of worshipping the Sahebs like Usha". Counsel said he thereby means to say "will you worship Western ideals?" He is disparaging those who follow Western ideals.

"*Ei chila sci Gopania Kotha.*" He explains the secret in the letter and asks for the co-operation of his wife. He asks his wife to worship God, then she will be able to realise these things. There is nothing in that letter except that it refers to his wife's vices which he says are vices of the present time. Then he says that every high ideal is now-a-days laughed at.

I refer your honour to the letter, dated the 30th August, 1905. I submit that the letter shows no disposition on the part of Arabinda to use physical force of any description at all. On the contrary what the writer does rely upon is what he calls *ब्रह्मतेज*, (*Brahmatej*). You will find later on that all throughout his activities he merely advocates the application of the force to which the phrase *Brahmatej* refers. Here is a man who regards it as a part of his ideal of religion to bring about the salvation of his country. If at the same time he says "I am not going to fight with swords or guns," if the man says that it is the part of his religious ideal to bring about the salvation of his country and that by applying *Brahmatej*, it is for you to consider what the man had in contemplation. It is a truth of political philosophy. You remember in this connection that no government, however absolute or representative it may be, can exist except without the consent of the people. It is a maxim which is well recognised by political philosopher from Hobbes to Spencer downwards. When a Government exists it shows conclusively that it exists with the consent of the people. He preaches that the salvation of the country must be attained by people who possess "*Brahmatej*." First of all, I submit that he preaches the ideal of freedom because he thinks that until a transformation in the thought of the people is brought about he cannot accomplish his ideal. He says and says candidly that it cannot be brought about in the life-time of an individual. But before that point is reached he holds that the people must be educated at any rate. And it is when the consent of the people is lost that the Government ceases to exist. What are the means he adopts when he comes to Calcutta? He takes up the cause of National education. All throughout his activities and until the day of his arrest he was always in favour of National education. He sacrificed his worldly prospects in order that he might improve the national education of his country. He joins the National Council of Education and fills an important post there. He engages himself in the swadeshi and boycott movements. In this connection his ideal is that when the people have learnt to love the country they must encourage the industries of the country. Arabinda's view with regard to swadeshi is that

it is not purely industrial. I do not desire to justify Arabindo's connection with the swadeshi-boycott movement purely on industrial lines. His way of thinking is inconsistent. What I do say is that he has got one all-absorbing ideal for the regeneration of his country, and the basis of that ideal is religious. His advocacy of the swadeshi, boycott and national education is not only for the industrial development of the country, not only the development of the education of his country but he thinks that these are means which are conducive to the awakening of the national spirit of this country. This is the line of his activity. Before I deal with the various documentary evidence upon this point, you will allow me to place before you two letters which will throw some light. One letter is dated the 30th August, 1905 which will show the thing in its two aspects, and the other letter is dated the 17th February, 1908. I shall also refer to another letter to which my learned friend has not referred. It is of the 20th February, 1908. The first letter is marked as 292-4 and the second 292-10. The first letter is set out in the first volume of exhibits page 401. With your permission I will deal with the letter in Bengali.

Counsel next read the letter in original Bengali and then the English translation. The letter stated "I have not written to you for a long time. I was to return on the 8th but I could not do so. Wherever Providence took me to I went. I was not engaged in my work but His."

Commenting on this Counsel said, this letter shows where he did go. Various witnesses also spoke about it in the course of the trial. The contents of the speeches he delivered will show in what way his activities were directed. I submit that whatever activities he was engaged in, were based on religion.

My learned friend seemed to have thought that Arabinda in his statement dissociated himself from political work. But in his statement he says, "in all my activities, political, religious or otherwise, I followed the principles which are enunciated in my letter of the 30th August." Far from dissociating himself from it, he admits that he was engaged in a political work. My learned friend has a marvellous faculty of misunderstanding Arabinda. Here is an interesting point in my learned friend's address. With reference to the transformation of Arabinda's thought as referred to in the letter my friend was going to suggest something, but all on a sudden he turned away in another direction and suggested that on account of the "sweets letter" there was a transformation in his thought. My learned friend branched it off as it were and said his case was that Arabindo was engaged throughout in the conspiracy. That point he gave up, namely, the suggestion that "Sweets letter" had anything to do with this wonderful transformation in Arabinda's activities.

Counsel here read the letter further on, which says "the

condition of mind is different now and I am no longer subject to my own will. I shall have to do whatever He bids me." Your Honour will see how Arabinda's convictions were getting deeper and deeper every day. You are familiar with the Hindu thought on the point. In this connection I may point out to Your Honour the utterances of Ramkrishna Paramhansa and other saints. The man considering himself as the actor is inconsistent with the principles of Hindu religion, the very essence of which is তুমি যজ্ঞী আমি যন্ত্র। *i. e.*, you are the player of the instrument and I am the instrument itself. This thought is referred to in the letter of the 30th August in which Arabinda says to his wife "you may think that I am doing all this of my own accord but these are not my own actions. I am merely an instrument of the divinity within."

Continuing counsel said : you are also aware of the line in the "Geeta" ত্বয়া হৃদিকেশ হৃদি হিতেন বথা নিযুক্তোহস্মি তথা কৰোমি। *i. e.*, Thou dwellest inside me and I do whatever Thou dost engage me in.

Mr. Das read the line in the letter which showed that God had shown a specimen of his boundless mercy. Does this—asked counsel—suggest bombs? It marks the beginning of his religious convictions. Arabinda says further on in the letter that God will show His mercy to her also, He will show her also the way. Does it suggest that his wife is to join the conspiracy and engage in the preparation of bombs to kill Englishmen? It is for the wife to help the husband in the exercise of the religious rites. Arabinda used the word সহধর্মিণী in the letter referred to above. He calls his wife সহধর্মিণী according to Hindu ideal. I suggest that this transformation marks the beginning of Arabinda's religious convictions. The wife is to assist the husband in the exercise of his religious rites. Arabinda writes to his wife "pray to God half-an-hour everyday and He will give you strength. You will be in a position to assist me in my religious practices."

Counsel read that portion of the letter which says বলা নিষিদ্ধ; *i. e.*, what he writes is not allowed to be divulged. Counsel commenting on this said, if a man takes the বন্ধ he is not to divulge it to any one, even to his wife unless he gets permission from his *guru*. Arabinda says that the matter is গোপনীয় *i. e.*, secret. I submit that even if the language of this letter is strained no other construction could be put upon this. He says তোমাকে ছাড়া কাহাকেও বলি নাই, বলা নিষিদ্ধ, *i. e.* I have not said it to anybody else except you and I am not allowed to divulge it." Why? If it is a matter of conspiracy, the conspirators know it. Aurobindo says বলা নিষিদ্ধ। The Government Translation of this is "I have been specially forbidden to disclose it." I submit that this is not a proper translation. The correct translation would be "it is not allowable." The letter of the 30th August is on a purely religious topic; because he for business matters refers his wife to Sarojini.

After his return from the Congress he must have taken the mantra and he was anxious to take his wife along with him.

Barin went to Baroda in the year 1905. My learned friend suggests that it was at this time that the seeds of anarchism were sown. The letter Ex. 286-3 was written before Arabinda came to Calcutta. First of all it shows that at that time he was not interesting himself in Calcutta politics. He did not know anything about Bengal politics at that time excepting the Swadeshi movement which was all over India at that time. The letter states further on 'I have had to spend a lot of money on account of the Swadeshi movement. I have another movement in view which requires unlimited money.'

But what is this movement? My learned friend suggests that it is the movement that you have got here. But was it started at that time? Was it started as far back as 1905? Arabinda writes "I have had to spend a lot of money on account of the swadeshi movement. I wish to carry out another movement which requires unlimited money." I submit, observed counsel, this movement is not the movement of the bomb. Arabinda's idea was to start an extensive movement of Vedantism. He desired to spread it not only all over India but all over the world. He is a Vedantist and he bases whole of his activities on Vedantism. He was thinking of starting the movement on the basis of his truest principles. You must not forget that it is not a matter of conjecture that Vedantism may be carried outside India. It has already been carried into America and also into England though not to the same extent into the latter. The movement of bombs according to my learned friend was inaugurated in Calcutta sometime after the time mentioned in the letter. Whenever my learned friend comes across the word "movement" he at once comes to the conclusion that it must be a movement of bombs. I need not trouble your honour with anything further about this letter.

The next question is when Arabinda came to Calcutta. He came sometime in May, 1906, and then he went to Baroda back again. It is very important to fix the date. Here is a letter from Arabinda to his father-in-law. It is marked 292-6 and dated 8th June. You will find the letter on page 5, first book. It is written from Calcutta. The letter states "if you are anxious to send Mrinalini down to Calcutta I have no objection. Barin has fallen ill. I suggest that he may go to Shillong for a change. If he goes, I am sure, you will take care of him. Barin is somewhat erratic. He is specially fond of knocking about in a spasmodic fashion when he should stay at home and nurse his health. I have learnt not to interfere with him in this respect. If I interfere and try to check him, he is likely to go off at a tangent and become worse."

Commenting on this counsel observed, my learned friend has made use of this letter and observed that Arabinda is a very affectionate brother.

On the 7th July, observed counsel, Arabinda was at Baroda. Between the 6th July and August, there is no letter to throw any light. If you turn to page 254 of the first book, you will find at the bottom of the page, that Arabinda is described as a service-holder. This document is dated the 1st of August, 1906. So far as documentary evidence is concerned, you find that Arabinda was in Calcutta on that date.

It is clear—observed Mr. Das—that Arabinda had come to Calcutta shortly before the 1st of August. Witness Sukumar Mitter also spoke about this, but his evidence is rather hazy with regard to dates. It happens that he never went to Baroda after that. He must have sent his resignation. The National College was well established in the meantime and he became Principal of the College.

My learned friend calls the period between August 1906 and October of the same year the “period of great activities.” Arabinda became the Principal of the National College within this period. Within this period of time the “Bande Mataram” was started. He was certainly one of the promoters of the “Bande Mataram” Company and the venture, the “Chattrā Bhandar” was called into being. These are the three lines of his activities. I will prove here that so far as the “Chattrā Bhandar” is concerned, he had no connection with it except that he signed his name as a witness. This was a mere formal matter. He was connected with both the institutions, the National Council of Education and the “Bande Mataram” if I am allowed to call the latter an institution. I do not admit for a moment that he was Editor of the “Bande Mataram.” But I do not for a moment deny that he was connected with it and certainly he was connected with it as a contributor.

My learned friend speaking about the “Chattrā Bhandar” observed that it is a limb of the conspiracy. Because Arabinda was connected with it, or Arabinda is a conspirator, so the Chattrā Bhandar is a limb of the conspiracy. The question is “Is Arabinda a conspirator?” The charge that he is a conspirator is laid at his door, because of his alleged connection with the Chattrā Bhandar. First of all, if you look at the memorandum of Association of the Chattrā Bhandar, you find that Arabinda signs his name as a witness. My learned friend says that the organization is a limited liability company, its Articles of Association and so forth are mere devices. He observes that they do not represent the real state of affairs. The argument is that the “Chattrā Bhandar” became a limited liability company with a view to conceal its real object.

Mr. Norton :—I never said that.

Mr. Das :—Perhaps it is owing to my weak intellect that I could not understand what my learned friend said. He said as a matter of fact that it is a cloak to conceal the design. Let us look at the document itself. I am referring to clause III of it. It says that the Company is started to carry on business as merchants, traders, importers, exporters, and general business merchants, both wholesale and retail. It shows that the *Chattra Bhandar* is not purely swadeshi. It proposes to import. As for exporting opinion varies. I am not, however going to enter upon an economic discussion. If you look at "D" you find that it has no connection with any political design. It does not look like a conspiracy. Mr. Norton remarks that this company was started as a cloak to conceal the dark design. The rules were framed in such a way as to conceal the nefarious design. But what do we find here, shareholders are restricted. It depends upon the directors to take shareholders in. Rule X declares that if a shareholder is indebted he cannot buy or sell his share to get rid of the debt. But if you read Rules VI and X together you find that there is no difficulty in selling or buying shares. There is also no difficulty for outsiders to come in. Still my learned friend holds that the *Chattra Bhandar* was a device to conceal its nefarious design.

My friend suggests that the *Chattra Bhandar* was intended to help the conspiracy. 40 per cent. of its profit is to be divided amongst shareholders. My learned friend commenting on the clause which provides that 30 per cent. of its profit is to be devoted to philosophic work, observes that it was to effectuate the nefarious design.

It is a custom in this country amongst people who start business as limited liability companies, or those who start business by themselves to distribute a portion of the profit to the welfare of the community. I submit that is a perfectly good thing. You find this even amongst common shop-keepers who set apart something which they call "*britti*."

Mr. Norton :—Is that evidence ?

Mr. Das :—It is a common custom in this country. Can I not refer to that ? Your Honour may have come across this in many civil cases. It is very usual amongst shop-keepers to keep portions of their profit. They do it in this way : For each article sold they keep one pice and this they devote to charitable purposes. We have the great institution at Sodepur which the Marwaris keep up in that way—the institution where Your Honour send your broken horse.

My submission is that if they really intended to start the "*Chattra Bhandar*" as a cover for their dark design, why did they start a limited liability company at all ? Could they not start a part-

nership business for that purpose? If you start a company, you bring yourself directly under the inspection and supervision of the Director. The accounts are rendered liable to be inspected and checked, whereas if you start a shop, you have to avoid all that. However there is nothing to prove that the limited liability company was formed to devote the profits to the nefarious purposes. If they had that design, they could start a shop, there is absolutely no evidence to show that the profits were appropriated for any dark design.

Mr. Norton :—There was no profit at all.

Mr. Das :—If there was no profit, it cannot be said that they had any nefarious design. The whole thing is based upon suspicion. Assuming Arabinda had such design, what proof is there that Arabinda was connected with it? He simply signed his name as a witness. I desire to show that no suggestion of suspicion can be based upon the evidence adduced on this point. Witness No. 84, Pabitra Chandra Dutta said, "I went to Subodh Mullick and got him and Arabinda Ghose to sign as witnesses because they were big men." Mr. Norton tried to get out from this witness Arabinda's connection with the "Chattrā Bhandar". He says "we decided to go there, as we thought they were big men. Subodh Mullick had made a donation of a lakh of rupees towards the Bengal National College. He was looked upon as a great man in Calcutta." Pabitra said "Arabinda used to live at that time at 12, Wellington Square. I went to Subodh Mullick and he told me looking towards Arabinda Ghose 'you had better take his signature.'"

Speaking about Arabinda Ghose's connection with the *Bande Mataram*, my learned friend observed "I do not care whether he was Editor or not. I say he is the paper itself."

Mr. Das here read the deposition of Sukumar Sen. The witness said (he was at the time professor of the National College)—"Arabinda never advocated violence, or I would have remembered it. The Company was regarded more as a national organisation than as a commercial venture. The object was more political than commercial."

Continuing counsel said : I find that Arabinda was connected with the old "Bande Mataram." He was present at some of the meetings of the company. He was not the manager of the paper. He was for some time the Managing Director of the "Bande Mataram" Company.

Counsel referring to exhibit 950D said that Arabinda was not connected with the "Bande Mataram" as Editor or Sub-Editor. He had nothing to do with the dealing with telegrams, reprints, etc. The prosecution of the "Bande Mataram" I may tell your Honour was for having published an English translation of an article which had appeared in the "Jugantar".

Judge :—Does not the witness Sukumar Sen say who was the editor ?

Mr. Das :—The witness stated that Bipin Chandra Pal refused to act as joint editor along with Arabinda Ghose. He wanted to have the entire control of the paper as the editor-in-chief. But there was difference of opinion. Arabinda Ghose was offered the editorship but he refused to take the sole responsibility. For he could not do that. He was at that time the Principal of the National College. In only one issue his name was published as editor. But in the next issue it was taken off.

Judge :—Some addresses were presented to him as editor.

Mr. Das :—That was through the impression that he was editor. Arabinda was not responsible for anything that appeared in the "Bande Mataram." There is no magic in the name "Editor."

My learned friend says he does not care if Arabinda is editor. He says that he is the paper and that this paper was born in conspiracy. Let us look into it and see if we can find anything dangerous or anything that suggests bombs or conspiracy or waging war against the Government. Far from any such suggestion your Honour will find the suggestions which, I have said, are the ideals of independence, and the means suggested are those of passive resistance. The point on which the greatest stress is laid in the articles is national education, swadeshi and boycott. These points are typical of this paper. The fourth point was the general ideal of freedom. To reach that ideal of freedom they advocated the same policy I have mentioned up to the last day. You will find that they not only did not advocate the formation of secret societies but whenever anything happened which drew their attention they deprecated the secret societies in an emphatic language. I do not for a moment suggest that the ideal of the Bande Mataram was not "absolute independence." It was that and nothing but that, and they always deprecated the ideal of improvement of the Government in this country by the putting in of one member in the Executive Council, or additional members in the Viceroy's Council. It was repeated over and over again that they were not in favour of reforms, but what they desired was "a forming." It would not serve the national ideal by legislation of a tinkering kind, that is to say giving some advantages here and some advantages there. All the articles read out by the prosecution in condemnation of Lord Morley's scheme were in reference to that. Those are the honest views of the paper. If those views constitute in any way the waging of war against Government, I will have to say that Arabinda is guilty. My contention is that it is open to them to preach the ideal of freedom and lay down the methods in the way the "Bande Mataram" has done—the methods of passive resistance, boycott, national education and swaraj. Whenever any

suggestion of any violence is made your Honour will invariably find that it is necessary for the purpose of repelling an attack. I shall read a few articles to show that it is not true that the "Bande Mataram" was born in conspiracy. I shall refer to an issue of the 18th September 1906 under the heading "That Sinful Desire." (Reads). It refers to those constitutional troubles within the Congress itself. I submit that there is nothing felonious in that article unless my friend means to say that you must read between the lines.

Mr. Das then read an article entitled "The idea of National Council" to show the attitude of the Bande Mataram towards secret societies. Counsel read a paragraph dated 3rd October, 1905, which he put to Purno Chandra Lahiri in cross-examination. The article was entitled "Golden Bengal Seize".

Now with regard to the National College I have one word to say. There again I do not quite understand my friend's argument. He does not suggest as I thought at first he did that the Council of National Education was a limb of the conspiracy against the Government. What I understood him to suggest was—I say this subject to correction by your Honour—that Aurobindo made use of the National Council to give effect to his nefarious views. If that was so then no inference can be drawn against him from the fact that he was connected with it. I ask your Honour not to draw any inference from the fact that he was connected with the National College. If inference is to be drawn it must go further: not only must the National Council be not harmless but it must also be proved that the National Council is a part and limb of the conspiracy. Unless that is established, mere connection with the National Council will not give rise to any inference adverse to Aurobindo Ghose. You will find in the evidence that Aurobindo was connected with it not only after it was started but he came down to Bengal expressly for the purpose of carrying on the National Council of Education. He took part in it before it was started as we find in the evidence of Satish Chander Mukerjee, and the best part of the arguments too shows that he did not intend to use the National Council of Education as a party organ in this conspiracy. At the time the National Council was formed who were the men we find in it? Dr. Rash Behari Ghose, Sir Guroo Dass Bannerjee, and Mr. Nagendra Nath Ghose with whose names no one will ever try to associate politics. That conclusively proves that Aurobindo had no control over it, or if he had it was not his intention to make it a sort of organ for his political activities. The people in Bengal wanted to keep the National Council of Education free from political activity. This inference clearly arises from the names I have mentioned. It was intended, as the prospectus shows, to be an institution to further the education of the country and it was intended to be free from all political bias of either party. Ara-

bindo was selected as the Principal of this College because he was under the circumstances the fittest person. When he came to Calcutta in August 1906 he was still in the service of Baroda. He does not give it up until after he is appointed Principal of the National College. With reference to this I desire to read just a few lines of the evidence of Satish Chandra Mukherji (Reads). There is no evidence even that Arabindo exercised any active control so far as the selection of the course of studies was concerned. I submit that this fact is of no importance at all in arriving at the question whether Arabindo Ghose is guilty or not of the charges brought against him. I submit that although it does not help you in coming to any conclusion as to his guilt it shows --as I have submitted to you before--that the course of the activity of Arabindo Ghose was in accordance with the principles which were enunciated in that letter of 13th August, 1905. That is all that I have got to submit up to this period of 1906.

The next period I take is the period from October 1906 to April 1907. This is a period of very little activity on Arabinda's part as you will find during that period he was mostly ill. You will find --I will state the facts before I prove them-- that he was at Deoghur from 11th December, 1906 to the 14th December, 1906, and again from 27th January, 1907, to the middle of April 1907, and you have heard from the evidence of Sukumar Sen that on the night he left for Deoghur permission was asked --after his name appeared as Editor of the "Bande Mataram" --if he would agree to be the Editor and upon his refusal his name was removed the next day. With regard to three different dates which I have given there is very little documentary evidence in the case, and from Arabindo's written statement I shall have to refer to it. In this connection we see that he was ill. He had to take leave from the National College on several occasions; in fact he was practically ill during the whole of this period (Reads Arabindo's statement). Satish Chandra Mukherji was asked about it and he said that the statement about Arabindo taking leave was true.

Another thing which I should like to point out in this connection is that there is no suggestion that at that time there was any activity in Seal's lodge. That was from a few days before February 1908 to some time in April 1908.

With reference to this period my learned friend read out some articles in the "Bande Mataram" dealing with autonomy, swaraj etc., and he further said that they contained a show of racial antipathy, that there was no love for humanity and that they advocated a direct violation of the law. Well, I have read those articles over and over again and I say that they are absolutely -- every one of them -- free from any one of those charges, except the charge --and I did not understand my friend to bring that in as a charge-- that they wanted to bring in absolute swaraj. What I did understand him

to say—if I have understood my friend aright—was that the means suggested for attaining Swaraj, was not legal and it was that that made the ideal of Swaraj improper. He took care to say that and I must say that it was very fair on the part of my learned friend to point it out.

So far as these articles are concerned I submit that the charge of racial antipathy cannot be brought against the "Bande Mataram." The particular note in the "Bande Mataram" was "love for its own people" and if that in itself involved some antipathy it may be expected, but what I want to lay stress on is, that the dominant note was not antipathy but love for its own people, and in dealing with that it may be that the articles have referred to other nations not in very complimentary languages. If you read the whole thing you will find that the object is not to attack any nation at all, but to point out that we must fall back upon our own resources, and stand on our own legs, or in other words, as I have pointed out before, that you cannot attain your ideal except through your own salvation. The Bande Mataram had to attack other nations because it pointed out that the people of this country were under the spell of foreign civilisation, under alien civilisation and wanted to dispel by these articles that peculiar hypnotism that was cast on the people of this country by European nations. Not that European civilisation is bad, but that European civilisation is for "Europeans." European nation must develop in their own way; they must rise to the noblest and best in them according to their own traditions. So also with the Indians; they must also take their own stand. Not that European civilisation is bad—I want you to particularly notice that—you won't find that in the articles—but that European civilisation applied to us. European traditions brought into this country, are not the materials upon which this nation can grow. That is the philosophy underlying all the articles. The European civilisation is as a tree which grows in the soil of England; if you bring that tree here, it will not attain the same growth because the soil is not congenial. In the same way the development of a nation must be based on its own traditions. If you base it on any other traditions the soil will not be congenial. As for antipathy and dislike for humanity they are not to be found in those articles. I submit they breathe all that my friend denies. I say according to these people nationalism has no rational basis to go upon unless it be for humanity. I ask your permission here to read an article which comes into this period. It is written in very figurative language, but the thing it brings out is the inner philosophy of this school, (reads article entitled "Nation Day" October 16th.)

Counsel next referred to the period from April 1907, to September 1907, i. e. up to the acquittal of Arabindo Ghose in the sedition case. In this period, counsel said, Arabindo's activities

were confined to the National College and Bande Mataram. In this connection counsel read a letter written to Arabinda from Tokio sympathising with him in his trouble with the Bande Mataram Trial.

There are some articles of the *Bande Mataram* of that period. Counsel then read the article of the 17th September headed "The secret of prudence and moderation". The article also deals with passive resistance. "Every country fought its battle of freedom in its own peculiar way. We can use our passive resistance in such a way, etc." (Reads). I need not trouble your Honour with other articles because the idea is the same. They are articles on the Congress, *Swaraj* and so forth.

It is a curious feature that the whole evidence against Arabinda is doubtful. When your Honour finds, so far as Arabinda's case is concerned, that there is something unusual, something difficult to understand, I submit that your Honour may come to the conclusion that there is something behind the series of difficulties. When your Honour finds that some act is repeated a number of times your Honour may draw that inference. (Reads) I suggested to him why he did not put any mark. He says he put some mark in blue pencil which was obliterated (Reads).

I submit there is nothing in it which goes against Arabinda.

The next period I take up now is from September 1907 to December 1907. Your Honour will find that from the middle of October 1907 to about end of December 1907, Arabinda was ill and he was at Deoghur. I ask your Honour's attention to the letters and other evidence on this point because this matter is of some importance in connection not only with this topic but also with different topics.

Counsel next read a letter from Mr. Paika which related the entire activities of Arabinda with regard to the Congress. The writer invited a number of extremist delegates. Arabinda wanted to put the Congress on a representative basis. He said that what is alleged to be a national gathering must be national in the true sense of the word.

Judge.—The Congress has ceased?

According to the Extremists the Congress has ceased to be. But according to the Moderates it is still going. It is like "The Duma is dead. Long live the Duma."

Counsel next referred to the slip which was sent to the *Bande Mataram* for discussion.

Your Honour will find, continued counsel, from the evidence of Mr. K. B. Dutt that Mr. Surendranath Banerjea did not like the idea of giving up boycott at the Conference. A few days after they issued a circular that *Swadeshi* covered everything. The

extremists say that it was merely a trick to mislead the people who feel very thoroughly on the question of boycott.

Mr. Das referred to a letter from Mr. Tilak to Arabinda Ghose. It asked Arabinda Ghose to invite a large number of extremist-delegates to the Congress. Mr. Tilak wanted to have a separate Conference for the nationalists. His idea was to have a separate Conference as soon as the deliberations of the Congress were over. Their attitude was not to break up the Congress. They want to have the question of electing Dr. Rash Behari Ghosh decided by voting. The extremists wanted to have a separate sort of party organisation for them. In England the parties have their own organisations, the Liberals, the Conservatives, down to the socialists. They did not want to force their views. They wanted to see that the views of the delegates were represented by the Congress. I submit the Nationalist Conference was held and passed resolutions. These resolutions were published in newspapers. They assembled not to break up the Congress. They did not say "if you don't accept our views, we shall break your head." They had no bombs in their contemplation. I do not say as my friend suggested that they had bombs in their contemplation.

Judge.—It is rather forcing their views on the Congress.

Mr. Norton.—Surely.

Mr. Das.—The position of affairs was this. The nationalist delegates did not want Dr. Rash Bihari Ghose as the President. They wanted Lala Lajpat Rai. If he declined, then they would have Mr. Surendranath Banerjee.

Mr. Das.—There is no difference between extremists and moderates. The moderates have the ideal of "swaraj" on the colonial lines while the extremists have the idea of "swaraj" in the independent form.

Mr. Norton.—The moderates have the ideal of Government as obtained in the colonies.

Mr. Das.—What is the difference? Where is the control of England over the colonies?

Judge.—It is a matter of policy.

Mr. Das.—It is not a question of ideals. The Parliament cannot force its views. The extremists liked to put their ideals in a more logical form. The "Bande Mataram" made this point clear. The moderates and extremists mean the same thing but the moderates have not the courage to say as the extremists.

The same letter contained a phrase which was printed as "Government Expression," saying that if Dr. Ghose was rejected, there would be "Government Expression."

Judge—It is probably repression.

Mr. Das next made reference to a letter, from Mr. Tilak to Babu Moti Lal Ghose asking him not to accept Dr. Ghose as the leader. Counsel referred to the manifesto issued by Arabinda Ghose inviting extremist delegates to the nationalist Conference here.

Your Honour heard the discussion about the scheme for the constitution of the Congress. That was another point on which there was a good deal of dispute between the extremists and the moderates. Mr. Norton suggested that he got it at Surat, nobody would dispute that. To my mind it was a scheme drawn up for the purpose of drawing a constitution for the Congress. The subjects mentioned were National Fund, Arbitration Court, Primary Education, Swaraj and Boycott. They were to be discussed either in the Congress or it suggests a scheme that is to be proposed before the country for the Congress. The worst point in that is the establishment of Arbitration system, of course from our point of view. There is nothing sinister, nothing, suggestive of bombs, conspiracy or anything of the kind (Reads).

Then some other letters appear during that period. I will not read them. They prove Arabinda's connection with the Bande Mataram. It is admitted. That is the letter which I have referred to in connection with Arabinda's residing at Deoghur. In this letter the writer made suggestions for the improvement of the Bande Mataram. It was from a man of Bombay. He thought that Arabinda had some influence over the Bande Mataram, that is why he wrote it to him. It is clear, that Arabinda had some sort of control and I have all along admitted that both here and elsewhere in connection with the other case.

Arabinda's work was a work of love to the "Bande Mataram." He would not be put to such a position so as to be responsible for anything appearing in the Bande Mataram. He had not the time nor his health would allow him to look after or supervise the paper. That is why he refused to be the editor. He was not the editor at any time. It is the case with English newspapers that the reporters send their reports and they are printed and the editor is responsible for what appears. He associates myself with the views but he does not hold himself responsible for anything that appears in the editorial columns. I can't ask Your Honour to read the whole but there was nothing to show that he was responsible.

Continuing counsel said—I have got a few articles of the "Bande Mataram" placed before Your Honour. I placed articles published in December 1906. I have got 3 or 4 articles representative of different views of the different parties. Arabinda was

arrested on the 2nd May, 1908. I have taken up all the articles from December 1906 to April 1908. They conclusively support the contention that I have made from beginning to end.

Mr. Das then dealt with several articles from the paper during this period and assailed the argument of Mr. Norton about the alleged connection between the Nationalist papers.

He continued :—I have dealt with the evidence with regard to the so-called conspiracy and I now desire to draw Your Honour's attention to certain points in common between the moderate papers, the "Bengalee" and the "Indu Prokash" for instance and the Anglo-Indian papers like the "Statesman," the "Indian Daily News," the "Pioneer" and the "Englishman." Still these papers have their peculiarities. I cannot forget the fact that there must necessarily be a great deal in common between them. It is, by no means, a violent assumption to say that. But inspite of the points in common, each paper must stand on its own legs. Your Honour will find certain peculiarities in each paper. Your Honour knows the "Bengalee" and the "Indu Prokash" of Bombay are perfectly moderate papers. I do not know why my friend will extend his triangle so far.

So far as the "Bande Mataram" and the "Jugantar" are concerned, I shall show by reference to one article that according to the "Bande Mataram," the ideal of freedom must be attained by passive resistance, Swadeshi, Boycott, national education, courts of arbitration etc. To quote from the famous speech of Gladstone, "you must educate yourself for self-government. You must take up as much work of Government as you can do". National education, Swadeshi, If these are methods laid down by the "Bande Mataram." The paper says that it is only by perusing these methods that you can attain self-government. Make yourself fit for self-government. This is the doctrine of political philosophers in Europe upon which the view is based. This view has again been analysed by the "Bande Mataram" and adapted to Vedantism pure and simple. Every philosopher in England deals with the growth of democracy. From the time of Hobbs down to the time of Spencer,—passing from the period of English history known as the period of French illumination, it has been held that the Government can only exist with the tacit consent on the part of the people. In point of time, if the character of the Government be most despotic that you can imagine or representative, the mere fact that the Government does exist shows conclusively that the people has consent to it. There was a time, according to Hobbs, when the people and the King used to meet together. They met why? To determine the consent of the people.

Locke borrowed his views from Rousseau on this point. Spencer's "Man vs. State" embodies this view. As a matter of fact,

the relation between the Governor and the governed is based upon actual contract. It may not be so historically speaking but it must be true logically speaking. You cannot govern people against their wishes. At every point of time that the Government exists, it shows that it exists, because the people lend their support.

Continuing counsel said Arabinda also exposes the same theory. He gives a new expression and makes it a new point of his philosophy. This doctrine of the tacit consent of the people and another doctrine which is misapplied, namely "vox populi vox dei," are applicable in this connection. Arabinda holds the same principles whether with regard to the nation or the individual. He sees in the development of the society or the individual, the manifestation of God. He takes the same principle of development according to the law of Nature or Law of God, in the light of Vedantism. "Vox populi vox dei", i. e., the voice of the people is the voice of God, because the people are the manifestation of God. No man can attain salvation except by severe self-restraint. Unless he restrains himself, he has no hope of salvation. If you apply this doctrine, as Arabinda Ghose has applied it, to the situation of this country, what is the result? The result is that the people want "swaraj" or self-government. I do not desire to repeat my argument here. Arabinda has taken care never to define the form of "Swaraj". Arabinda has advocated national education, Swadeshi, boycott and court of arbitration whereas the "Jugantar" in its article headed the "Suchana" holds that no progress of the country is possible without independence. Talk of Swadeshi, the "Jugantar" laughs at it. Talk of national education, arbitration court, the 'Jugantar' says all that is a pastime. No progress of the country can ever take place unless you have absolute independence. This is the essential difference between the principles of the *Bande Mataram* and the *Jugantar*. Mr. Das here read articles from the *Sandhya*, *Navasakti* and other papers to show the difference in the tone of their writings.

Mr. Das then went on to discuss some unpublished writings of Arabinda Ghose. My learned friend, observed counsel, argues that the writing No. 2998 furnishes an index of the man's thoughts. This writing is in Bengali: My friend does not show that it is in the handwriting of Arabinda Ghose.

Mr. Norton—I suggest that it is the handwriting of Sarajini.

Mr. Das—It certainly looks like a lady's handwriting. I fail to understand how it furnished an index of Sarajini's thoughts. Sarajini is not before Your Honour as a conspirator.

Referring to the article "morality of boycott," Mr. Das said "since the man did not publish this, I venture to submit that he did not publish as he thought the article might be misunderstood. How can you convict a man for unpublished writings?"

It is for Your Honour to say whether these writings can furnish an index of the man's thoughts. I submit they cannot. Because the words and phrases employed do not clearly and completely bring out his ideals. Arabinda thought the writings might be misunderstood so he did not publish them. Unless you can show that they were secret documents, intended to be circulated amongst the people secretly, you cannot draw the inference that the writings supply an index of the man's thought. I ask Your Honour to interpret the point charitably. These writings were not published anywhere. Arabinda could publish them easily. They are open to this charitable construction that since Arabinda feared they might be misunderstood, he did not publish them. I ask Your Honour to accept the charitable construction. The writings do not bear the meaning which my learned friend sought to put into it."

Mr. Das read a long unpublished article by Arabinda Ghose entitled "What is Extremism." Referring to a sentence "the law was made for man and not man for the law", the Judge asked if each person was entitled to pass his own judgment on the law.

Mr. Das emphatically replied "Yes". After all, he continued, the principles of a man's life must be guided by his own conscience.

Mr. Norton, interrupting, asked how the societies were to exist?

Mr. Das, continuing with his argument put the question "is it not the same view which obtains in other countries with regard to passive resistance?" Have not the people often disobeyed the provisions of the law and taken the penalty?

Mr. Norton---Not on the ground that the law is wrong.

Mr. Das---That is Arabinda's view. Proceeding Mr. Das said that Arabinda put it on the ground of organic unity between the Government and the people. They were not judging the man on account of his ideals. So far as the infringement of the law was concerned it was the same in other countries. The Government do a certain thing and the people say it is wrong and unjust. If they are fined, they are prepared to pay the fine.

In the language of Arabinda you have got here an authority which has not sprung from the nation as a part of its organism. The Government has not sprung here from within the people as the Government of other countries. No one can gainsay the truth of that. Arabinda never hesitated to put that forward over and over again. I object to the Government of this country not because it is an autocratic Government, not because it is not a democratic Government or of its particular actions which are criticised by others. My objection is based on philosophy ;

that this Government has not sprung from the people as a part of an organism.

Arabinda's argument was based on the ground of "utility." And after all, counsel declared, the basis of all legislation in England was utility ; something which helped the growth and development of the nation. That was the claim of the Government. We pass this law because it is in the interests of the people, and the interests of the people, counsel said, could not be considered apart from the development of the nation.

Counsel read some further passages from the article where Arabinda discussed the methods by which they were to attain the ideal of freedom. Commenting on this counsel said if a bomb were brought to Arabinda and he were asked "Shall I throw this at the first Englishman I come across?" Arabinda would say "Will this accomplish the great ideal?" The answer, counsel said, would necessarily be 'no' because it would not produce the desired effect.

His Honour—If effective, use it ?

Mr. Das—If the oppression increases to such an extent and people are so united together, and have got such resources at their back that they think they can fight the Government in battle as it were they may do it, but not now.

His Honor—He goes back to the Utilitarian method if you are strong enough to fight.

Mr. Das : Yes, that is the whole trend of his argument.

Proceeding Mr. Das repeated his former argument regarding the methods advocated by Arabinda, insisting on the point that according to Arabinda violent methods were bad and peaceful methods were good. In the paragraph discussing the methods, which counsel read, Arabinda was taking each particular ideal and probing it in order to test its truth or otherwise. He was discussing the best ideal. Counsel read a sentence regarding one of the means discussed by Arabinda which ran "whether it is worthy of a great people who is struggling to be" ; counsel called His Honour's attention to this question put by Arabinda.

Counsel continued : If there was a section in the Penal Code—which fortunately there was not—that the preaching of national freedom meant sedition, Arabinda's answer would be, "nevertheless I must do it. I cannot help it. It is within me and that is what I owe to myself and my God."

Referring to another passage where after discussing certain questions Arabinda said "the result will be anarchy" Counsel said he was surprised at Mr. Norton who was an English scholar saying that he meant anarchist's outrages. He challenged Mr. Norton to point out from the writings of any English writer that the term "anarchy"

has been used to mean "anarchists' outrages." "Anarchy" counsel said, meant "disorder" and Arabinda was referring to a sort of social chaos.

Counsel read some further passages with the object of showing that the metaphors used by Arabinda were taken by Mr. Norton literally. When he spoke of sacrificing their lives for the country Arabinda meant that they should suffer. Referring to the expression "Manuring the soil with their blood" counsel asked if such a thing was possible, it was a mere metaphor. He exhorted the people to suffer to the last extremity. What would happen, counsel asked, if passive resistance could be so well organised that all the people refused to pay taxes. It was not a very pleasurable subject to deal with, but counsel said one could well imagine that there would be firing of guns and the result of that would be that the people would be weltering in blood.

Proceeding Mr. Das said he was outlining a passive resistance which it would be impossible to reach, but the man who was writing was pushing a wrong point to its logical conclusion. The point he had fixed his attention on was the method and the ideal. The point he was pursuing was whether it was effective and consistent with the traditions of the country. No nation could grow out of subjection unless it was prepared to suffer. The reference to blood and darkness and death, counsel averred, was figurative. If it led to disorder even then it was welcome because it helped to attain the development they were seeking. It did not help Mr. Norton in thinking that it referred to bombs, ammunition or any other thing.

Referring to the word Revolution which appeared in a passage in the article, Counsel said, that this did not have the same meaning as the French Revolution. The word was used in the sense of peaceful revolution.

Proceeding with his argument counsel said "If Your Honour looks at the dominant notes in the unpublished writings it is perfectly in accord with the real nature of Arabinda's writings. If you take hold of a word here and a paragraph there you will not get the real intention. Your Honour must read that article with all the other articles. Counsel referred to another article from which Mr. Norton quoted the lines of Wordsworth incorporated in the article "who would free themselves must themselves strike the blow."

Commenting on this Mr. Das said: "My friend seems to think that it is indicative of bombs. If Your Honour reads the whole article you will find that it is written in appreciation of Rash Behary Ghose's speech delivered at the Congress. The author quotes this particular line of poetry to support the contention that Mr. Ghose put forward that nations by themselves are made "

Counsel next dealt with the "sweets letter." He said, "Your Honour will find that having regard to the circumstances as disclosed in the evidence of this case, Your Honour cannot accept the document as being in the hand-writing of Barindra Kumar Ghose, or that it was sent to Arabinda Ghose. What does it show? The letter is supposed to have been written by one brother to another at Surat. Therefore if this letter is genuine both the brothers were at Surat at that time. I submit that it is utterly improbable, assuming that both the brothers are conspirators, that one brother should write to another brother in this way. There they could have talked to each other, explained their thoughts--each to the other--without writing at all. The letter states "we must have sweets all over India ready made for emergency. I wait here for your answer." The case for the prosecution is that Barin used to address Arabinda as "Shejda". Did Barin forget this when writing this letter? He writes "Dear brother". In this country no younger brother would write to any elder brother, as "Dear brother" except to the eldest brother.

Judge :—What do they write ?

Mr. Das :—Mejda, Shejda etc. only the eldest brother is addressed as brother. The fact that both the brothers being at Surat, Barin wrote to Arabinda, is extremely improbable.

I draw Your Honour's attention to the fact that Barin signs "Barindra Kumar Ghose." My learned friend says that Arabinda and Barindra are Europeanised. But Barin came to India at the venerable age of one year. I left England 15 years ago, I do not know whether the custom has changed there. But when I was in England I noticed that a brother never set out his full name when writing to another brother.

Judge :—I would not put my full name. I would omit my surname.

Mr. Das :—Nobody would sign like that. Considering the probabilities I submit that when a brother desires to communicate something to another brother, the proper form of signing his name is not to give the full name like Barindra Kumar Ghose.

Mr. Das continuing said, "this Sweets Letter is taken with Arabinda and treasured down. It is taken to different places in the Bombay Presidency. It is brought to Calcutta back again. It is kept at 23 Scott's Lane for a couple of months and the Police are lucky enough to find the letter at 48, Grey Street. It is grossly improbable. I submit that under the circumstances, Your Honour will hesitate to accept this as evidence and proof against Arabinda Ghose."

Mr. Das here read from the evidence of Mr. Creagan. Counsel commenting on the evidence said, on the 2nd May, not only

the 48, Grey Street, was searched, but the other houses were searched as well. All the articles found at the searches were sent to the Park Street Thana. There is no reason why an exception should be made with regard to 48, Grey Street. The documents of 15, Gopi Mohan Dutt's Lane, and the garden were both sent to the Park Street Thana.

Mr. Das then referred to the great confusion in the evidence of the Police witnesses with regard to the finding and examination of the letter at the Thana.

Mr. Das : There is just another point about the "sweets" letter which is this—Your Honour will find that the number of the bundle was subsequently added to. Mr. Creagan in his cross-examination says "the letters might have come out of the envelopes." I submit that the "sweets letter" could not have been in the bundle. The number of the letters in the document must at least be 64. There were 64 letters and 20 envelopes.

Mr. Das referred to the evidence of several other witnesses and commented on them, after which he summed up. He said "I must thank Your Honour and gentlemen assessors for the very kind and patient hearing you have given me throughout this case. My only wish was that the task might have fallen on other hands to place this case before the Court ; but as it fell on my hands I did all I possibly could to place the evidence in this case before the Court in a connected form. There is one point which struck me at the outset of this case but I did not refer to it so long, as I thought it could be dealt with more conveniently and appropriately after I had finished dealing with the evidence oral and documentary, on the record. Your Honour will find that my learned friend's case is that Arabinda is the head of this conspiracy. He has credited Arabinda with vast intellectual attainments and with vast powers of organisation and his case was that he was directing this conspiracy and was working from behind. Now it is with reference to this that I make my submission before Your Honour, that having regard to the nature of the conspiracy which has been established by the evidence,—if it has been established at all—it is impossible that Arabinda could ever have believed that that conspiracy was likely to succeed. If you say that Arabinda is not gifted with the intellectual powers with which you have credited him that is another matter. But if you say that he is all that you have been kind enough to say he is and concomitant with that he is the head of the conspiracy and is directing the conspiracy, my answer to that is, the conspiracy is of such a nature that it is impossible to believe that Arabinda could ever have thought in his mind that it could succeed. My learned friend has referred to the thousand and one ramifications of that conspiracy and he has argued that there was a conspiracy from Calcutta to Tuticorin and other places and in order to substantiate this vast conspiracy as it

were, he has not hesitated to bring a charge of conspiracy against persons of whom there is not the slightest evidence on record to show that they were in any way connected with it. I ask you to disregard all that; the conspiracy is in my learned friend's imagination; I do not for a moment suggest that he does not believe it to be true; I don't suggest that he does not believe every word of what he has said and that he has no misgivings on the point. I wholly concede that he fully believed in the conspiracy which he has put forward before the Court and the only way I can explain that and the only suggestion that I can make is that he has been under the tutelage of the police for a long time and the police have poisoned his mind during the last ten months and no doubt he sincerely believed in it and put it forward before the Court.

But the evidence is entirely different. From the evidence as is furnished by the confessions in this Court—confessions upon which the prosecution relies—you will find that it is a childish conspiracy—a toy revolution. It is impossible that Arabinda could ever have believed in his heart of hearts that by bombing one or two Englishmen, or some Englishmen at different places, they would ever have been able to subvert the British Government. If you credit him with intellectual powers and say that he has a brilliant mind, it is not open to you at the same time to say that he was the leader of a childish conspiracy and a toy revolution. That is the difficulty which comes up at the very threshold of this case. Either drop the suggestion that it is because of his intellectual powers, because of his eminent qualities with which he is credited that you want the Court to believe that he was the leader of the conspiracy; or the other theory that he was in fact the leader of this conspiracy and of this alleged revolutionary project. Apart from that suggestion if you turn to the evidence what do you find? It is argued that the confessions are evidence against Arabinda. My answer is that the confessions exonerate him. If it is argued that the watch witnesses and the other witnesses have proved conclusively that there has been association between Arabinda and the conspirators, I submit that that evidence is such that you can't place the slightest reliance upon it: not only that, but that under the circumstances one could only expect the evidence to be of such a character. If the Government takes into its head to believe that there is a vast conspiracy which is threatening the stability of the Government, it is common knowledge, that you do come across spies who give false evidence. I shall just read a passage from a book written by an eminent Judge. "The Government under those circumstances have spies who wriggle into the case, eaves drop into families, abstract correspondence and forge letters." Therefore the evidence given before you is evidence that you can expect in a case like this. It seems to me if you consider the evidence carefully and apply the different tests I have suggest-

ed and submitted for consideration, I have hardly any doubt that you will reject that evidence as untrustworthy. Is it argued that in the different letters that have been put forward there is a case against Arabinda, that these letters show that Arabinda is implicated in any conspiracy whatsoever? My answer is that the letters themselves don't show anything of the kind. It is my learned friend's interpretation on those letters; and in some cases in regard to Arabinda's connection with certain boys that interpretation has been of such a character that one can hardly resist the temptation of calling it ridiculous, reminding one of the case of Mrs. Bardell against Pickwick. He reads a document and imports into that document things which are not to be found in the four corners of the document, but which have evolved out of my friend's inner conscience. If you read the documents as they are, having regard to the circumstances under which they were written, I venture to submit before you, that there is hardly any doubt, whatever may be the view, that those documents do not bring the guilt home to Arabinda Ghose with reference to any of the charges brought against him. My further submission is that my learned friend to a certain extent realised that and he said out of despair as it were, 'never mind the letters, never mind the evidence but look at the probability, look at the man's thought.' It was in that view that he put before you the different newspapers and the charge of conspiracy and wholesale conspiracy against many men of light and leading in this country. 'Read the "Bande Mataram," read the different speeches and read the other newspapers—my friend says that you must read the other papers because they are all linked together—and you discover what his thoughts were. If you analyse those speeches and writings and if you find an indication that the man was putting forward before the country, the ideal of freedom, you must take it for granted that he was also in favour of applying bombs, of secret societies and such other means as some of the evidence in this case discloses.' My submission to you is—I made it before and I do so again—that those papers and the writings and speeches are not legal evidence in the case at all; but if you do take them you find unmistakable indication that whatever may be Arabinda's views, he is not guilty of the charges brought against him. I have placed before Your Honour the letter of the 13th August 1905. I read to you the whole of that letter and commented on it and I explained to you what the different thoughts in that letter are. (Reads) 'I say, as I have said in my statement, that ever since I came to Calcutta from Baroda, I never for one single moment deviated from the principles laid down in that letter. I have said I never took any part in politics. I have said in my written statement, whatever the nature of my activities, be they political, social or religious, that throughout the whole course of my activities, I never for one single moment deviated from the principle laid down in that letter

of 13th August. The whole of my case before you is this. If it is suggested that I preached the ideal of freedom to my country which is against the law, I plead guilty to the charge. If that is the law here, I say I have done that and I request you to convict me. But do not impute to me crimes that I am not guilty of ; deeds against which my whole nature revolts, and which having regard to my mental capacity are something which could never have been perpetrated by me. If it is an offence to preach the ideal of freedom, I admit—having done it—I have never disputed it. It is for that that I have given up all the prospects of my life. It is for that, that I came to Calcutta to live for it and to labour for it. It has been the one thought of my waking hours, the dream of my sleep. If that is my offence, there is no necessity to bring witness into the box to depose to different things in connection with that. Here am I and I admit it. My whole submission before the Court is this. Let not the scene enacted in connection with the sedition trial of the "Bande Mataram" be enacted over again, and let the whole trial go into a side issue. If that is my offence let it be so stated and I am cheerful to bear any punishment. It pains me to think that crimes I could never have thought of or deeds repellent to me, and against which my whole nature revolts, should be attributed to me and that on the strength, not only of evidence on which the slightest reliance cannot be placed, but on my writings which breathe and breathe only of that high ideal which I felt I was called upon to preach. I have done that and there is no question that I have ever denied it. I have adopted the principles of the political philosophy of the West and I have assimilated that to the immortal teachings of Vedantism. I felt I was called upon to preach to my country to make them realise that India had a mission to perform in the committee of nations. If that is my fault you can chain me, imprison me, but you will never get out of me a denial of that charge. I venture to submit under no section of the law do I come for preaching the ideal of freedom and with regard to the deeds with which I have been charged, I submit there is no evidence on the record and it is absolutely inconsistent with everything that I taught, that I wrote and with every tendency of my mind discovered in the evidence.

My appeal to you therefore is that a man like this who is being charged with the offences imputed to him stands not only before the bar in this Court but stands before the bar of the High Court of History and my appeal to you is this: That long after this controversy is hushed in silence, long after this turmoil, this agitation ceases, long after he is dead and gone, he will be looked upon as the poet of patriotism, as the prophet of nationalism and the lover of humanity. Long after he is dead and gone his words will be echoed and re-echoed not only in India. but across distant seas and lands.

Therefore I say that the man in his position is not only standing before the bar of this Court but before the bar of the High Court of History.

The time has come for you, sir, to consider your judgment and for you, gentlemen, to consider your verdict. I appeal to you, sir, in the name of all the traditions of the English Bench that forms the most glorious chapter of English history. I appeal to you in the name of all that is noble, of all the thousand principles of law which have emanated from the English Bench, and I appeal to you in the name of the distinguished Judges who have administered the law in such a manner as to compel not only obedience, but the respect of all those in whose cases they had administered the law. I appeal to you in the name of the glorious chapter of English history and let it not be said that an English Judge forgets to vindicate justice. To you gentlemen I appeal in the name of the very ideal that Arabinda preached and in the name of all the traditions of our country; and let it not be said that two of his own countrymen were overcome by passions and prejudices and yielded to the clamour of the moment.

Mr. P. Mitra then argued the case on behalf of Asoke Nandy, Debabrata Bose, Indra Nandy, Hem Chandra Das and Dindyal Bose and contended that no charge of conspiracy had been brought home to them. Suggestions and inferences based on assumptions were the utmost that could be urged against them. *Mr. P. Lal* then dealt with the cases of Nagendra Gupta and Dharani Gupta. Both were convicted by the High Court for possessing arms at 134 Harrison Road and was given 7 years' imprisonment. There was nothing to show they were in any conspiracy.

Babu Nagendra Nath Banerjee, vakil, addressed the Court on behalf of Bejoy Bhattacharya and drew the attention of the Court that the crown counsel admitted that the evidence fell short of necessary standard and that the formula for bomb was not found on the first day and Bejoy was not aware if it.

Babu Bejoy Krishna Bose took up the case of Abinash Bhattacharya whom, he said, the Crown Counsel wanted to sacrifice at the altar of Arabinda. Evidence was given that he was connected with *Jugantar* and was the author of two nefarious books *Bartanay* *Ranaviti* and *Mukti kone Pathay*. So long as Abinash was connected with *Jugantar* there were two prosecutions viz., those of Bhupendra Dutt and Baikunta Acharya. The two issues upon which the prosecutions were based were not printed at Abinash's Press. Abinash was only the manager and though he was prosecuted, he was acquitted. After that he cut off all connections and sold the Press. All letters addressed to him as Manager, after this were not found with him but with Taranath. The articles

reprinted in the *Mukti kone Pathay* were those upon which the Government did not elect to prosecute and he did not consider it wrong to print them for sale. He wanted to start the *Navasakti* as a paper different from the *Jugantar*—as he thought that by writing violent articles and going to jail the gospel of freedom could not be preached. Abinash's name is not to be found in any note book anywhere. In all the confessions no mention of Abinash was made except only to show that he was connected with the paper *Jugantar*.

Mr. R. N. Roy argued the case then on behalf of Provas De and the three Sen brothers of Sylhet and Babu Dwijendra Nath Mookerjee for B. K. Kane.

Mr. E. P. Ghose then addressed the Court on behalf of 9 accused persons. He first stated the general principles of law and evidence which the Assessors should bear in mind. He adopted all the points of law taken by Mr. C. R. Dass as his own. The four overt acts, viz. two on the L. G., one against the Mayor and another against Mr. Kingsford were intended for individuals and could not be construed into waging of war. He submitted his clients were all new comers, novices, who knew nothing of any conspiracy. He then dealt with the individual cases of Purna Chandra Sen, Narendra Buxi, Krishna Jiban Sanyal, Sachindra K. Sen, Hemendra Ghose, Naliny Gupta, Bejoy Nag, Birendra Nath Ghose, and Sishir Kumar Ghose.

Mr. J. N. Roy then discussed the case of Hrishikesh Kanuizil. He protested against the way the case was put by the Crown Counsel which made the task of the defence difficult. The Court looked like a fortress with the accused not in dock but in an iron cage. Of the 1500 documents put in many were irrelevant. Mr. Norton placed before the court the whole of the political and moral revolution lately going on in Bengal and had challenged the new life that had sprung up with all its aspirations and manifestations. Everything that is grandest and noblest in the culture and manhood of the nation had been placed on trial. Are you strong? You are then a conspirator. Are you young? that absolutely proves that you are a conspirator. Are you religious? you must be a conspirator. Do you read the *Geda*? Do you study vedantism? Are you a genius? that is proof positive you are a conspirator. After dealing with the evidence against his client he concluded by saying "the eyes of whole Asia, if not the whole world have been upon us for months past. We have done our part and it now remains for you to do yours. You must have observed that in the history of individuals as in the history of nation there comes a time when the sense of judgment is obscured. It is for you to say whether you think that the mere thought of a far off revolution in the minds of half a dozen or dozen men can be accepted as waging war against the King. It is for you to say whether the overt acts

in this case do constitute overt acts at all. You will remember the magnitude of the trial and your duty is to do justice. You are no politician and politics have no place in a court of justice. Because a man shows some of the beliefs, some of the hopes, some of the fears of a particular generation does that constitute evidence of association in a case of this character? Lastly, gentlemen, you have heard of the price that England has to pay for Empire. Well, I will say this that splendid as the Empire is, you will deem, the world will deem that Empire is nought if it is found wanting when weighed in the balance against justice."

Babu Bejoy Krishna Bose was requested to argue on behalf of Nikhleswar Roy Moulik in the absence of his pleader who had fallen ill. He divided the case into four parts *viz.*, his alleged connection with the *Jugantar*; his connection with the *Chattru Vandal*, his connection with the different places and the search of his house at Dumrai, and his alleged connection with the conspiracy. He got 160 per month for printing the *Jugantar* in his press. Its office was elsewhere *Chattru Vandal* was a purely business concern. His client was not seen in any place of conspiracy nor was he named in any of the confessions. He concluded his address with the following words :—

"And now gentlemen you have heard the last of the speeches on behalf of the defence. So far as this historic trial is concerned—the first of its kind in India—what remain now is for you, gentlemen Assessors, to give your opinions and for His Honour the Judge to deliver his judgment. I have the unique honour and opportunity, Sir, of appearing before you in two of the longest trials over which you have presided here in Alipur—perhaps the longest in your Honour's experience as a Judge in this country. In the other case—*K. E. V. Habib and others*—all the accused persons were acquitted by your Honour. I do not know neither can I anticipate what the result of this trial will be, but I have not the least doubt that justice will be vindicated. The task of finding out the really relevant pieces of evidence from the vast mass of irrelevant evidence put in in this case, is indeed Herculean. Ridiculed by a reptile press, looked on with suspicion by the prying Police, hampered in our work by the want of facilities for proper instructions, weighed down with the enormity of accumulated prejudice—we have toiled on for months actuated only by the highest and the noblest motives which inspire the profession—holding aloft the glorious tradition for which the Bar stands—to help justice and to vindicate innocence—cheered in our labours by the only redeeming feature in the case, the uniform courtesy we have received from the Bench. To think that all the 36 persons arraigned at the dock behind us, are guilty of a conspiracy to wage war against the King is outrageous. I have no doubt, Sir, that you will decide this case as an English Judge would do—for justice is

the bulwark of the state. British rule in India is broad based upon the hearts and affections of the people, not because of its brave Army or invincible Navy—but on account of its strict and impartial administration of justice wherein lies its real strength. Long after the dust of controversy and racial feeling that have been raised over this unfortunate case will be forgotten and when history alone will remain to bear evidence to this strange episode and to write with its unerring hand on the tablet of Time its just and eternal verdict—the one fact which people will never forget and will cherish with pride and satisfaction will be that there was a British Judge who kept himself cool, whose judgment was not warped by prejudices and predilections, who held the scales even and did justice for the sake of justice.”

The opinions of the two Assessors were as follows :—

GUILTY.	NOT GUILTY.	
	Sishir Ghosh (by one)	Asoke Nandy
	Naliny Sarkar	Sushil Sen
Barindra	Sachindra Sen	Birendra Sen
Indra Bhushan	Kunjo lal Saha	Hem Sen
Upen Banerjee	Bejoy Nag	Dehobrata Bose
Ullaskar Dutt	Narendra Baxi	Nikhileswar Roy
Paresh Monlik (by one)	Purna Sen	Bejoy Bhattacharya
Bibhuty Sarkar.	Hemendra Ghose	B. H. Kane
	Nirapado Roy	Provash Dey
Hem Das	Arabiinda Ghose	
Hrikesh Kanjilal	Abinash Bhattacharya	
	Sailendra Baxi	
	Dindoyal Bose	
	Sudhir Sarkar	
	Krishna Jibau Sanyal	
	Birendra Ghose	
	Dharani Gupta	
	Nogendra Gupta	
	Indra Nandy	

THE JUDGMENT.

On the 6th May 1909 the following order was passed :—

Judgment delivered. Accused Birendra Kumar Ghose and Ullaskar Dutt are sentenced to death under sec. 121, 121 A, and 122 I. P. C. and they are informed that if they wish to appeal

they must do so within one week. Accused Hem Chandra Das, Upendra Nath Banerjee, Bibhuti Bhushan Sarkar, Hrishikesh Kanjilal, Birendra Chandra Sen, Sudhir Kumar Ghose, Indranath Nandy, Abinash Ch. Bhattacharya, Sailendra Nath Bose are sentenced to transportation for life under Sec 121, 121 A, and 122 I P C. Accused Indra Bhushan Roy is sentenced to transportation for life under sections 121A and 122 I. P. C. Accused Paresh Ch. Moulik, Sishir Kumar Ghose, Nirapado Roy are sentenced to transportation for 10 years under sec. 121A and 122. The properties of all the accused will be forfeited to Government. Asoke Chandra Nandy, Balkrishna Hari Kane, Sushil Kumar Sen are sentenced to transportation for 7 years. Krishna Jibon Sanyal is sentenced to one year's rigorous imprisonment under sec. 121A. The rest of the accused are acquitted and to be set at liberty. Send the record to the High Court for confirmation of the sentence of death.

The following are portions of the text of the Judgment delivered :—

JUDGMENT.

May 6th, 1909.

The accused are charged under sections 121, 121A, 122 and 123, I. P. C. The facts of the case are as follows :—In October 1907 information came to the police of the existence of a secret society. This was reported to the Director of Criminal Intelligence, India. It does not appear that anything further was ascertained till early in December an attempt was made to wreck the Lieutenant-Governor's train at Naraingarh on the Bengal-Nagpur Railway. Special officers were deputed to investigate and some information was obtained at the end of January or beginning of February 1908, in connection with the secret society. As a result certain places in Calcutta were watched and a look-out was kept for the first accused, Barendra Kumar Ghose. One of the places watched was No. 32 Muraripukur Road in the suburbs of Calcutta. This place, which is spoken of as the garden throughout the evidence in this case, consists of a rather large piece of ground with a small building in the centre.

In the middle of March a number of men were seen in this garden and shortly after more police officers were placed on special duty to watch suspected persons. Early in April the accused Barendra was followed from a house, No. 38-4 Raja Naba Krishna's Street, in which the accused Hem Chandra Das was living, to the garden, and two days later, viz., on 10th April Barendra and two other men were followed from the garden to No. 38-4, and thence to Howrah and to Mankundu by train. Mankundu is the next station to Chandernagar. The three men walked to Chandernagar

followed by the police, who eventually lost sight of all of them, one who is said to have been Barendra, being followed to the house of one Hari Neogi there, from which he was not again seen to come out. On the night of the 11th an attempt, with a bomb, was made on the life of the Mayor of Chandernagar, the reason suggested being that shortly before he had prohibited the holding of a political meeting in Chandernagar, a meeting which attempted to assemble but was dispersed.

On the morning of the 11th two of the three men were followed to a house in Serampore, one of the two being Narendra Nath Gossain, who was later arrested in connection with this case, offered a pardon, made King's evidence and finally murdered in Alipur Jail.

On the 20th April two men who were followed from the garden to Circular Road were seen to meet two men there, who were taken to be Madrasis. The two latter were subsequently followed to a house, No. 15 Gopi Mohan Dutt's Lane, which, the evidence shows, had been hired on the previous day by one of the accused Nirapada.

On the 21st April two men were seen to take a cart to No. 38-4 Raja Naba Krishna's Street. It was there loaded with various things, among other things some tin boxes, and then driven to No. 15 Gopi Mohan Dutt's Lane, where it was unloaded.

A watch was then set on No. 15, and to facilitate the watch the police hired a room in a house almost exactly opposite to No. 15.

On the 26th April a hackney carriage was brought to No. 15, loaded there with two tin boxes, and driven to No. 134 Harrison Road where it was unloaded. One of the accused, Ulaskar, is said to have been in the hackney carriage with a canvas bag, similar to one brought from No. 38-4, while another of the accused was on the dickey-box.

Besides these main incidents, there is a considerable amount of evidence as to the movements of various persons, some identified, some not, between the places already mentioned and 23 Scott's Lane, 4 Harrison Road, 30-2 Harrison Road, and 48 Grey Street. This evidence will be more fully referred to later.

On the evening of the 30th April 1908, a bomb, supposed to have been intended for Mr. Kingsford, the District Judge of Muzafferpur, was thrown at a carriage just outside Mr. Kingsford's gate, and the explosion killed Mrs. and Miss Kennedy who were in the carriage.

On the night of the 1st May arrangements were made to search various places in Calcutta and the searches were carried out about dawn on the 2nd May. The places searched were the garden, 15

Gopi Mohan Dutt's Lane, 38-4 Raja Naba Krishna's Street, Nos. 4, 30-2 and 134 Harrison Road, and 48 Grey Street.

At the garden the first 14 accused were found and arrested, 13 being caught in the verandah and one, Upendra Nath Banerji, as he emerged from the small room in the building. The building consists of a large room or hall, a small room at one end of this large room, a verandah in front shown in exhibit 51, where the 13 accused were arrested, and a verandah at the back running along one side of the building. The photograph of the building, put in evidence, gives rather a false impression, making the building seem larger than it actually is.

[After describing the various searches and the things found the Judge continued]—The Magistrate took up the enquiry on the 19th May. The enquiry continued till the 19th August when 30 out of the 34 accused were committed to this Court. The Magistrate did not at first commit the accused Barendra Kumar Ghose for trial with the other accused, but committed him on a separate charge for abetment of murder. Subsequently, in consequence of an order passed by the High Court, he committed him on the same charges as the rest. During the enquiry ten other persons were from time to time arrested. They formed what is spoken of as the second batch. Of these ten, seven were committed for trial. The enquiry against one of the ten, Satyendra Nath Bose was not proceeded with, as during the course of the enquiry he was tried and sentenced along with Kamai Lal Dutt, who had been committed for trial in the first batch of accused, for the murder of the approver, Narendra Nath Gossain, in jail. These two men were subsequently executed. Of the seven men committed for trial in the second batch, one, Charn Chandra Ray, claimed to be a French subject. The charge against him was withdrawn under orders of Government and he was acquitted under section 494, Criminal Procedure Code. There are thus 36 accused before me. The hearing of the case began on the 19th October and the evidence was not concluded till the 4th March. At the opening of the case a number of technical objections were taken by the various defence counsel. These were all dealt with in orders that appear either in the order sheet or on the petitions themselves.

The prosecution seeks to establish association of the accused for the purposes of a conspiracy to wage war against the King at the various places which I have already mentioned, as well as at other places; to prove the connection of the accused with one another and with the conspiracy by letters and documents found at searches of these places or the houses of the accused; and it also seeks to show that for the purpose of disseminating revolutionary ideas among the people of India, missionaries were sent out to preach and newspapers started. The particular newspapers referred to are the *Yugantar*, the *Sandhya*, the *Narasakti* and the

Bande Mataram. It is further sought to establish the fact that a company was started, called the Chattra Bhandar Limited, which under the guise of a general trading company devoted itself chiefly to the circulation of seditious literature in which it was assisted by various agencies in different parts of the country.

For the purpose of showing the association of places, it will be as well to set out here certain specific instances of cases where the accused and others were followed by the police officers who were shadowing them.

[The learned Judge then dealt at great length with the evidence of the shadowing witnesses. He continued]—The connection between the garden, No. 15 and No. 134, being thus established, the question arises with what object were these arms and ammunitions collected and the explosives manufactured. We find the answer to this in Baren's confession.

Mr. Bonnerji argues that as the confession has been retracted it is no evidence against Baren and Mr. Dass argues that it cannot in any case be evidence against the other accused. He also contends that it is inadmissible in evidence. On the latter point his argument is that as the confession was made on the 4th May and Mr. Birley had written to the Commissioner of Police on the previous day to the effect that he would take up the case himself, therefore it was taken in the course of the enquiry and section 164, Criminal Procedure Code is not applicable, and that section 361 read with section 342 is not applicable because at that time no evidence had been taken which the accused could be called upon to explain. Assuming for the sake of argument that the enquiry was commenced on the 3rd May the argument if correct leads us to this position, that a confession cannot be recorded at any time between the time when the Magistrate says he will try the case till he actually begins recording evidence. There are many circumstances in which an accused might desire to make a confession between those dates, and I cannot conceive that the law ever intended to lay down that in such cases an accused shall be debarred from making a confession. It is true there is no section in the Criminal Procedure Code which provides specifically for the taking of a confession at that stage. But supposing there was no such section as section 342, which is merely an enabling section enacted for the benefit of the accused, the result would be that a confession would be absolutely barred after a Magistrate had passed an order in a case, whatever the nature of the order, until the accused was called on to plead and then he would merely say whether he was 'guilty' or 'not guilty.' This could never have been intended by the legislature, and it is to my mind clear that such statements could be received in evidence as statements made by an accused, in the same way in which they would be receivable if made to a person other than a Magistrate.

Mr. Dass contends that they cannot be admitted as such and relies on the case reported in 2 C. W. N., p 702. But there is a radical difference between that case and this. In that case the confession could have been taken under section 164, but the provisions of that section were totally disregarded and the decision really amounted to this, that when the provisions of section 164 are disregarded so as to make a confession, which could be taken under that section, inadmissible, the statement cannot be brought in merely as a statement under section 21 of the Evidence Act. Here the case is entirely different. On Mr. Dass's own argument section 164 is not applicable, consequently the case referred to has no bearing whatever on the facts of this case.

I am not prepared to assent to the contention that any order, as for instance an order remanding an accused to *hajat* on arrest, is to be taken as the commencement of the enquiry, but taking the point of view most favourable to the accused, I have pointed out that the statement--and the same argument applies to the confessions of other accused besides Baren's--is admissible in evidence. Other considerations apply to the confessions of Birendra Nath Ghose and Krishna Jiban Sanyal, which will be dealt with at the proper time.

It is also argued that the confession of Baren is not admissible in evidence as not being voluntarily made. Mr. Birley, who is an experienced and careful Magistrate, has stated with regard to this confession, as well as the others, that he was satisfied that they were voluntary. He took every means possible to ascertain that they were. He warned the accused persons in every case that the statement might be used as evidence against him, he put questions to ascertain whether the accused were speaking voluntarily. No doubt it may be said that if an accused has been induced to make a confession he will be instructed as to what answers to give to such questions. But the accused are not of the ordinary illiterate type of accused from whom confessions are often easily obtained. It is possible that some of the younger among the accused might be deceived, but the natural effect of such questions by the Magistrate would be to put the older accused on their guard.

It is pointed out that when Baren wrote out a statement for the police he had been in custody from the Saturday morning till the Sunday night, when the statement was written. On the other hand we have the fact that immediately after his arrest he had pointed out to the police at the garden, spots in the garden where the incriminating articles were found buried, and when he had himself pointed out these things, there is nothing extraordinary in his afterwards making a statement explaining the circumstances how they came to be there. And at the end of his statement he expressly asked the Magistrate to take down the reason for his disclosures. He says that his party was divided as to the propriety

of making the disclosures, but he persuaded them to give statements to Inspector Ram Sadai Mukerji, the reason being that because the band was discovered it was best not to do more work in the country and to save the innocent, and this very statement shows that at any rate the ordinary motive for a confession, to save one's skin at the expense of others, was entirely absent.

Mr. Bonnerji's case is that it was prompted by his "desire to save the innocent on the inducement of Ram Sadai that that would be best for them." Now strictly speaking, such an inducement would not make a confession inadmissible by reason of the terms of section 24 of the Evidence Act. That section applies to the case of a confession "caused by inducement having reference to the charge against the 'accused' person, sufficient to give him grounds for supposing that he would gain any advantage or avoid any evil of a 'temporal' nature in reference to the proceedings against him." In other words, it applies to the case of an accused who expects that he will himself gain something by confessing, but it does not apply to the case where he expects that he will get an advantage for some one else by confessing. A confession made simply from the desire to save the innocent, is not inadmissible within the terms of section 24. If made on an inducement, such a confession might be open to the criticism that it was not true, but it cannot be said to be inadmissible.

I do not, however, desire to base my decision on this technical ground, for I have no doubt whatever that the confession was quite voluntary. Made on the 4th May it was not retracted till the trial began in this Court on the 19th October, in spite of the fact that in the Magistrate's Court he had legal advice and that on the 13th August the Magistrate expressly invited him to affirm or deny the confession.

As I have been discussing section 24 I may here dispose of another argument of Mr. Bonnerji's, which was that other confessions were inadmissible because they had been made under Baren's inducement. Such an inducement does not, of course, come within the meaning of section 24.

[The learned Judge then discussed at length the confession of Barindra and the evidence in corroboration of it]—Can it be supposed that the collection of arms and ammunition and the manufacturing of explosives was merely for the purpose of a few isolated assassinations? Mr. Bonnerji argues that it was considered that there was a grievance against the Lieutenant-Governor on account of the Partition and against Mr. Kingsford for ordering Sushil to be whipped, that the action taken against these officials was purely personal and that these acts cannot be taken as overt acts betokening an intention to wage war, and he refers to Baren's statement that they never thought that political murder would bring independence. But what is the basis of

Baren's action? We have it from himself that it is the idea of independence. He found that a purely political propaganda would not stir up the country, so he appealed to religion, the most dangerous factor of all, especially in the case of an oriental people, when used to obtain political ends. And to further his views he starts the *Yugantar* paper. And a reference to some of the articles in that paper will at once dispel any idea that the object was anything but revolution. I shall, however, first refer to some of the things found in the garden as disclosing the aims of the society. First and foremost is the work on explosives to which I have already referred, the object of which was "to place in the hands of a revolutionary people a knowledge of explosives." Two complete copies of this and four incomplete copies were found in the garden, suggesting that this knowledge was not to be limited to a few people.

[The learned Judge then dealt with the findings at various places by the searches and referred to the writings of the various vernacular newspapers.]

The passages which I have quoted from the *Yugantar* exhibit a burning hatred of the British race, they breathe revolution in every line, they point out how revolution is to be effected; no calumny and no artifice is left out, which is likely to instil the people of the country with the same idea or to catch the impressionable minds of youth and, wherever we can reasonably expect to do so, we find indications of the methods advocated by the paper, in the garden. In the face of the evidence, I do not see how any reasonable man can doubt the connection between the two.

We have then the connection of 15, Gopi Mohan Dutta's Lane, 134, Harrison Road, and the garden established. We have further Baren's explanation of the collection of arms and ammunition, that it was in the anticipation of a far off revolution. We have his description of his attempts to rouse the people of India, and his starting the *Yugantar* for the purpose. We have corroboration of his connection with the *Yugantar*, and indication in the garden of attempts to carry out the teachings of that paper. What was advocated in the *Yugantar* can be gathered from the passages quoted, there can be only one opinion as to what it was, viz., to forcibly expel the British from India, in other words to wage war on the King and deprive him of the Sovereignty of British India. That he was assisted in his design by others is clear from the evidence of association at the places mentioned, as well as from his own statement and the statement of others. There can then be no question of the existence of a conspiracy to commit the offence of waging war, and to deprive the king of the Sovereignty of British India. The persons then who were members of that conspiracy are guilty under section 121A. Before considering whether the accused persons were or were not members of that conspiracy, it

will be best to deal with some general considerations and aspects of the case, and incidentally to deal with some of the objections as to admissibility of evidence that have been raised.

To put it shortly, practically every document has been objected to, which is not shown to be in the writing of some one or other of the accused. Some of the documents put in were found in possession of the accused, some were found in possession of persons alleged to be members of the conspiracy, some were found at places alleged to be places where the members of the conspiracy used to meet or to which letters addressed to them used to be sent in connection with the conspiracy, some were found at the offices of newspapers and at the *Chattri Bhandar* Office, which it is alleged were organisations for the purpose of carrying out the conspiracy. As to the admissibility of documents found in the possession of an accused, there can be no question. The fact of any particular document being in his possession is a relevant fact, the value of it is another question. The objection appears to me to confound the question of admissibility and value.

Documents found in the possession of persons, not undergoing trial, but who are members of the conspiracy, may or may not be admissible according to circumstances. If they are written by any person as to whom there is reasonable ground for believing that he was a member of the conspiracy, they are admissible against accused under section 10 of the Evidence Act, if in reference to the common intention of the conspirators. A document found in the possession of a person believed to be a conspirator might be admissible in the first instance for showing that that person was a conspirator, though the statements contained in it might not be admissible to prove the accused were conspirators, if not written by a believed conspirator.

Documents found at a place used as a receiving place by the conspirators might or might not be admissible according to circumstances. For instance, the owner of the house might be a perfectly innocent agent. In such a case, all documents found in his possession would not be admissible. But if they had reference to the conspiracy, they would be admissible, the possession of the agent being the possession of the principal. If they had no reference to the conspiracy, they would be useless as evidence.

The same principle applies to documents found at the offices of newspapers. If it is shown that the newspaper was an organisation for the purpose of carrying on the conspiracy, documents having reference to the conspiracy would be evidence to show that the accused were parties to the conspiracy. Some documents might be evidence only to show the connection of the paper with the conspiracy, some might be altogether useless.

From the very nature of the provision of section 10 of the

Evidence Act it is impossible to say at the time of filing a document whether it can eventually be used as evidence or not. For instance, a witness may speak of various facts and searches, and owing to the obvious disadvantage of recalling a witness again and again, documents have to be made exhibits, subject to their admissibility being established in the course of the case. Consequently it may be that documents put in anticipation that it will be proved that a particular person is a conspirator cannot be acted upon, because the prosecution has not shown that such a person is a conspirator. It may, however, be taken that the principles, which I have set out above, govern my consideration of the documentary evidence in this case.

It is argued that under section 10 a person has to be proved to be a conspirator before an act, saying or writing of his can be taken as evidence against the accused. That is not correct. All that is required is that there should be reasonable grounds for believing him to be a conspirator; if the contrary view were correct, the concluding words of the section would be useless. But, no doubt, to use the acts, sayings or writings of one person against another, there must be some evidence that he is a conspirator. What is required is (1) some reasonable ground for believing there was a conspiracy; (2) some reasonable ground for believing a person was a party to it, and then the acts, writings and sayings of any such person may be used against any other such person.

A point of danger in connection with section 10 is that of arguing in a circle. Thus five persons are charged with being members of a conspiracy, each one is suspected, therefore, because of his connection with the others, each is guilty. The wording of the section rather lends itself to the danger of one's falling into this trap, and I am not sure that learned Counsel for the Crown has altogether successfully evaded it. It does not follow that, because two persons are proved to be conspirators, a third, who is shown to be connected with both, is also a conspirator. It must be clearly shown that his connection was that of a conspirator. Now while I have shown that the formation of bands in the various districts was one of the methods advocated in the *Yugantar*, and that the connection of the *Yugantar* with the conspiracy is established, it does not follow that every club or Samiti in Bengal was in co-operation with the conspiracy. Nor, assuming it to be proved that any particular band was in co-operation with the conspiracy, does it follow that every member of the band was a conspirator. A conspiracy, from its very nature, requires caution and doubtless there would be a period of probation, at any rate, in most cases, before a person joining such a band was admitted to its secrets. Similarly, because a man is a National Volunteer, or an ardent or even violent supporter of *swadeshi* principles, it does not follow that he is a conspirator. Again, if any particular paper is proved

to be a limb of the conspiracy, it does not follow that every one connected with the paper is a conspirator; the Proprietor or the Editor would stand on a very different footing from a proof-reader. Nor because the *Yugantar* was a limb of the conspiracy does it follow that every paper that preached sedition was also a limb of it. "Ill weeds grow apace," and it may well be that the immunity of the *Yugantar* for a considerable period attracted competitors in a probably lucrative field, not only in the matter of newspapers, but of other seditious writing also. Similarly inflammatory speeches are not enough to prove a man a conspirator. Finally, because certain persons were caught in the garden, it does not follow that they were conspirators, provided they can give a reasonable explanation of their presence there. As I have mentioned, in the case of district bands, it is only reasonable to suppose there was a period of probation for recruits, and though one might expect that they would be put to some test before being admitted to the very head-quarters of the conspiracy, it must be remembered that Upen, who was apparently the chief missionary, was generally to be found there, and that Calcutta, with its college hostels and young boys frequently coming from outside, would be the most fertile recruiting ground. I have gone into these points at this stage to avoid repetition later.

[The learned Judge then dealt with the cases of individual accused at very great length] :—

In dealing with the case of Arabinda Ghose he said :—

I now come to the case of Arabinda Ghose, the most important accused in the case. He is the accused, whom more than any other the prosecution are anxious to have convicted and but for his presence in the dock there is no doubt that the case would have been finished long ago. It is partly for that reason that I have left his case till last of all and partly because the case against him depends to a very great extent, in fact almost entirely, upon association with other accused persons.

Before dealing with the evidence against him, I shall put as shortly as possible the ideal which his counsel claims that he has always set before himself. It is the case for the prosecution as well as for the defence that he is of a very religious nature, in fact counsel for the Crown takes the line that his religious ideas combined with a desire for independence for India have turned him into a fanatic.

His counsel argues that he is a Vedantist and that he has applied the doctrines of Vedantism to mould his political views; that as the doctrine of Vedantism applied to the individual is to look for the godhead within oneself and so to realize what is best within oneself, so in the case of a nation, it can only grow by realizing what is best within itself, that no foreigner can give it

that salvation, which it can only attain by methods indigenous to the country. His doctrines are not those of passive resistance, but of the realization of salvation by suffering. If the law is unjust don't obey it, and take the consequences. Do not be violent, but if the law is unjust, you are not bound morally to obey it; refuse to obey it and suffer. He has been saying to the people, you are not cowards, believe in yourselves, and attain salvation, not by assistance from outside, but through yourselves. And this Mr. Das says is the key of his case.

A written statement was put in by the accused to which it is unnecessary here to refer at length, but I shall refer to two points because Counsel for the Crown took up a great deal of time in arguing his case as if the accused had made two statements which in fact he nowhere did make. The first assumption which he made was that Arabinda says that he had nothing to do with politics, the second is that he says that he did not know Abinash before he engaged his services in setting up a house. With regard to the first assumption I need only point out that Arabinda says while in Baroda he took no part in the politics of Bengal; with regard to the second I need only refer to the paragraph 9 of the written statement, which gives no justification at all for the assumption.

In dealing with the case of this accused I propose to take the evidence in seven groups: (1) letters that passed between Arabinda and his wife; (2) letters between Arabinda and other persons; (3) Arabinda's speeches; (4) his writings; (5) Letters between other persons; (6) Entries in documents; (7) Facts, whether depending on oral evidence or deducible from documents. Finally I shall deal with certain important documents which require consideration by themselves.

In the first group there are three letters of 1902, none of which is important. There are no more letters till 1905, then we have three. The earliest in date is exhibit 2-6-1 and 2, a long letter from Arabinda to his wife, relied on by the prosecution on account of a few phrases in it and by the defence as a whole, as setting out the principles which govern his life.

He points out that his views and mental attitude are different from those of the people of this country and goes on to say that an extraordinary man is generally looked upon as either great or mad, and then says that he had got three ideas, which he characterises as mad, in what is doubtless a play on the word used in the earlier part of the letter. The first idea is that gift given by God should be used in the service of God and he refers more particularly to their use in works of charity. The second idea is that he is realizing the teachings of Hindu religion and feeling God within himself. The third idea is the one in which occur the passages on which the prosecution lays stress. "I know I have the strength to deliver this fallen nation. I may not have bodily strength but

"I am not going to fight with sword or gun but with the power of knowledge." In the last paragraph but one of the letter he speaks of deliverance of the country. And in the last paragraph he speaks of all this as a secret.

Mr. Das argues that the 3rd idea is drawn from Vedantism. The idea is that the whole world is divinity; if you can't see that, it is *maya*, or illusion. The country should not be regarded as so many rivers, fields, etc., but as a manifestation of the divinity. And if that be the true view of the passage, it is only natural that he should speak of removing anything which stands in the way of that ideal.

Taking the letter as a whole, it is a discussion with his wife, asking her whether she is going to follow the Hindu religion, which is his religion, or some other. He points out that she has been brought up in Brahmo schools, but is a Hindu none the less. Will she be a help to him in his religion, or will she follow foreign ideas? And as regards keeping the matter a secret, we find a reference to the same idea in the moral precepts in Baren Sen's book—"Do not disclose the principles of your religious faith."

If we start with the knowledge that the writer of this letter is a conspirator, we can find passages in it that are suspicious. Viewing it in an unprejudiced way, there is nothing in it that really calls for explanation.

The next letter in date is exhibit 286-3. In this occurs the passage, "I have to keep some money to send to Madhav Rao, who has been sent to England for some special work. I have had to spend a lot of money on account of the *swadeshi* movement; and I wish to carry on another movement which requires unlimited money." The prosecution suggests that this refers to revolution; the explanation offered is that Madhav Rao was a pupil of his and he used to help his pupils when they went to England; and that the movement which he contemplated was the one specified in paragraph 2 of his written statement, a large religious movement based on the Vedanta.

The next letter is dated 22nd October 1905 and is exhibit 236-4. He refers to Baren's ill-health and his energy in going out in the service of his country. He says, "Don't tell Sarojini (his sister); she will be mad with anxiety." We know in fact what was the nature of the work which Baren was engaged on at this time, from his own confession. The question is how far Arabinda was aware of his aims. The reference to Sarojini being anxious may merely mean on account of Baren's health. There is again in this letter an indication of Arabinda's religious tendencies, "the time for evening prayers is coming."

In 1906 there is no letter of much importance. Exhibit 286-6 contains a reference to his religious devotions morning and evening,

and to 12, Wellington Square, where he was evidently always welcome. Another indication of his religious ideas is shown in his having given up meat and fish.

In 1907 there is Exhibit 1121-1 from his wife to Arabinda on 1st December. The prosecution looks on it as important, from the reference to "your paper." In view of what I have already said about his connection with the *Bande Mataram*, nothing more need be said. There is also a reference to setting up the rents of the house, which apparently refers to 19-3, Choku Klausama's Lane.

Exhibit 394 is a letter of 6th December from Arabindo explaining why he was not able to send some brandy. He says, "Abinash is not here, nor is Sudhir, Baren was not here." He also refers to the time as being one of anxiety.

This letter is relied on as showing connection with Sudhir and knowledge of Baren's trip to Naraingarh. But there is nothing to show which Sudhir this was,--there was more than one,--and because he saw Baren on the 6th it does not follow that he knew what he had been doing.

The anxiety is explained as a worry in connection with the Congress. We know that much correspondence was going on on the subject. And again there is a reference that he cannot, like ordinary Bengalis, consider the happiness of his family the principal aim of his life.

Exhibit 288, dated 20th December 1907, is a letter from his wife, in which she shows resentment because he will not provide her with a house to live in, and there is a reference to the house, apparently 19-3, Choku Klausama's Lane.

Exhibit 1123-1, dated 3rd December, is a letter from his wife, saying that if Abinash is married he won't do "your work." If Arabinda is a conspirator, this may have a sinister meaning if his wife knew that he was engaged in a conspiracy: it may bear the innocent meaning that he would have to look out for some one else to look after his house.

Exhibit 292-4, dated 17th February 1907—obviously a mistake for 1908—is relied on as showing that he felt that a crisis was on him. If that be a correct view, it suggests that he was not at any rate previously a party to the conspiracy; and if that be the case, all the previous letters must bear an innocent meaning. The last words, "I have not written or said anything about this to anybody except you: mention is forbidden," may refer to the secrecy enjoined as to his religious principles. The letter reads like that of a man filled with religious zeal, and, unless he is deliberately trying to deceive his wife, shows the connection in his mind between religion and the doctrine of self-education that he was preaching in Bombay.

The result of the letters taken together is to show that he was a man of strong religious convictions and that he wanted his wife to share those convictions. There are some passages which may be suspicious, but which are also capable of an innocent explanation.

With regard to letters passing between Arabinda and others, a large number refer to arrangements for, and questions to be discussed at, the Congress. I do not propose to refer to these in detail, as they do not seem to me to carry the case much further. There is evidence of much jealousy between various prominent persons, but the main question appears to have been whether the Congress programme for the year was to be on lines advocated by the moderates or not, the so-called extremists contending that to do so would be to go back on previous Congress resolutions.

In Exhibit 293-13, dated 5th September 1906, Deshpande writes that he will be able to push on the movement in Baroda : "I have found two good workers at Godhra." This is capable of an innocent construction.

Exhibit 293-9 refers to the effect of Arabinda's writings in the *Bunde Mutaram*. The letter is quite capable of an innocent explanation. As I have pointed out, nothing that can be called revolutionary, in the bad sense, has been shown to me from the columns of that paper.

Exhibit 302-1 is a letter from V. B. Lele to Arabinda, dated 10th February 1908. It contains a reference to Sukumar, and the prosecution suggests that this is Baren. There is nothing to show that Baren is meant. We have evidence that letters came to the garden to Baren under the name Sukumar, but it is impossible to say that he is referred to in this letter. We do not know that he ever was at Nagpur. On the other hand, the witness Sukumar Sen was in Nagpur about that time.

The importance of this letter is that V. B. Lele was apparently one of the occupants of Sil's Lodge. A registered parcel came to him there from Baroda and was forwarded to 12, Wellington Square. It is suggested that he was perhaps on a pilgrimage to Baidyanath, but the evidence of the postmaster and the entry in the postal peon's register, "parcel rejes Prokash Babu si", shows that a parcel came to him c/o Prokash Babu, and this is clearly traced to be a parcel delivered at 12, Wellington Square. "Si" stands for Sil's Lodge. And we have the name V. B. Lele, with an address, appearing in both exhibits 382 and 667, apparently in Baren's writing.

Arabinda in his statement says he only knew Lele as a member of the Theosophical Society and a deep religious thinker. He does not know anything of his political views. The expression in the letter "with love and peace" rather bears out this suggestion.

The defence does not offer any suggestion for the presence of his name in these two books. The only one that I can think of in favour of the accused is that Baren may have looked on him as a man through whom religious ideas might be spread so as to pave the way for conversion to his propaganda of violence, but it is his presence at Sil's Lodge which is the damaging point, both in itself and especially when taken in connection with the entries in the two books. Of course, it does not necessarily follow that if Lele was a conspirator and a friend of Subodh's and if Subodh was a conspirator, Arabinda also was because of his acquaintance or friendship with both ; but each time contact is proved with a fresh conspirator an additional link is added in the chain of evidence.

Exhibit 300-2 is relied on as showing connection between Sudhir and Arabinda and also with reference to the rent for 19-3, Chokn Khansama's Lane. There is again nothing to show which Sudhir is meant.

Exhibit 300-29 is a letter to Arabinda from one Abinash, who it is suggested by the prosecution is not Abinash the accused, but one Abinash Chakrabarti. It is suggested that Abinash mentioned in the body of the letter is the accused. The letter is not dated and there is nothing to fix who are the persons referred to in it. It may, however, have some reference, as I suggested before, to Exhibit 992—the letter from Manik. With regard to Exhibit 992, it is suggested that reference to Arabinda and Baren may have been proposed as being relations of Satyendra. It is also argued that Manik's denial of the letter is probably true in view of Exhibit 1030 as it would have been useless to write to Nikhil after the deed was executed. But from Manik's evidence it appears that the trouble was by no means over with the execution of the deed. It is possible, though Manik denies it, that he gave Arabinda's name in the letter as one interested in national education, the ostensible purpose for which Exhibit 1030 was executed.

Exhibit 292-6 is evidently the letter referred to in paragraph 6 of the written statement. Arabinda speaks of Baren as "wilful and erratic, the family failing."

In Arabinda's speeches there is not much of importance. Evidence was given of his itinerary during January and February 1908 in the Bombay Presidency and reports of speeches made there. The whole of this evidence might very well have been omitted, as it proved nothing beyond the fact that he was received with acclamation wherever he went—a fact which the defence have never attempted to deny. So far as these speeches went, they help the defence more than the prosecution. From them we get an idea of the stress that he laid on national education, on lines other than those laid down in Government schools, and this is in accordance

with what is claimed as the ruling thought in his policy, that India is to find her salvation from within and not from without. The only passage that can be construed as at all inflammatory is the concluding sentence of one of his speeches, "live for your *swadeshi* or die for your *swadeshi*," which may well be excused as a mere piece of hyperbole.

More violent remarks are those which he is said to have used at a meeting on the 3rd April 1908, when he proposed a resolution of sympathy for the Tinnevely rioters. The meeting was as usual attended by volunteers carrying *lathis*. From the short note made by the police officer who reported the proceedings, he appears to have spoken in support of *swadeshi* and used the expression, "now is the time when the brain is to be prepared for devising plans, the body for working hard, and the hand for fighting the country's cause." The explanation given for this is that what he meant was it was too late merely to write and speak, the people must now be ready to put their whole heart into the cause. It is pointed out, with truth, that Arabinda constantly uses metaphors and figures of speech.

The speech as reported is compressed into very small compass : in fact, except for this phrase, the gist of his speech is given in four short sentences. It would not be right to lay too much stress on an isolated phrase in a speech very scantily reported, and while it must not be forgotten that the effect on his hearers might not be that which he himself intended, we must also not lose sight of the fact that the words do not accord with the usual tone of the *Bande Mataram*.

His writings are more important. I do not propose to refer to his writings in the *Bande Mataram* : I have already referred to the character of those, but to two documents that were found in his house. They are Exhibits 283 and 299-9. They appear to be articles written for some paper or review ; in fact, in the latter he speaks of "A former article in this review," but whether they were ever published in this or not we don't know. In the absence of evidence of publication or the intention for which they were written, they can only be treated as showing the trend of his ideas. The first, Exhibit 283, is headed, "The Morality of Boycott." There are passages in it which taken by themselves certainly indicate support of the use of violent methods and suggest that his line was that revealed by this conspiracy--first inspire your followers with religious enthusiasm and then get them to take up arms. He writes : "The *Gita* is the best answer to those who shrink from battle as a sin and aggression as a lowering of morality." Another question is the use of violence in the furtherance of boycott. "This is in our view purely a matter of policy and expediency. An act of violence brings us into conflict with the law, and such conflict may be inexpedient for a

race circumstanced like ours. But the moral question does not arise." Then he points out that the law is an interference with personal liberty. "The right to prevent such use of personal liberty as will injure the interest of the race, is the fundamental law of society. From this point of view the nation is only using its primary rights when it restrains the individual from buying or selling foreign goods."

"The morality of the Kshatriya justifies violence in times of war, and boycott is a war. Nobody blames the Americans for throwing British tea into Boston Harbour, nor can anybody blame similar action in India on moral grounds. It is reprehensible from the point of view of law, of social peace and order, not of political morality." But then he says: "It (*i.e.*, violence) has been eschewed by us because it is unwise and carried the battle on to a ground where we are comparatively weak, from a ground where we are strong." Again he says: "Aggression is unjust only when unprovoked; violence unrighteous when used wantonly or for unrighteous ends."

The argument of the whole article shortly is this: "to drive out that which is evil, violence is justifiable. We don't hate the English, but we object to their exploiting the country, for the interests of the two nations must be different; and we can stop that exploitation by boycott. Boycott is not morally wrong, for the ends at which it aims are the interests of the people. And that being so, we should be morally justified in using force, if we were strong enough to do so."

As a mere piece of philosophic writing there is no special harm in this. The danger is the state of feeling in the country at the time, and the suggestion that violence is justifiable if the nation wishes for a particular thing: the fact that in the circumstances the nation should not use violence is relegated to the background; equally so the question who is to decide what are the best interests of the nation. It is left for the reader to come to the conclusion that those who can make their voices heard most are to decide what are the interests of the nation and impose on the inarticulate masses a tyranny far worse than that which they themselves condemn.

Exhibit 299-9 is a still more extraordinary article. I shall not quote from it, as the omission of any sentences would affect the whole. The gist of it is that the object of the nationalist is to build up the nation. The nationalist has a deep respect for the law, because without it the nation cannot attain proper development. But the law must be in accordance with the wish of the nation. If it is not, it is utilitarian and not moral, and if immoral it should be broken. The nationalist is not afraid of anarchy and suffering. He welcomes them if the result is the building up of the nation.

Mr. Das argues that the real point of the passage dealing with anarchy and suffering lies in the three questions which the nationalist puts to himself with regard to a method: (1) whether it is effective, (2) whether it is consistent with the traditions of the people, (3) whether it is educative of national strength, and he admits that Arabinda's views are that if violence answers those tests, it is a method to be adopted: that when strong enough to fight, the nationalist will fight, but at present he must merely disobey the law, if he thinks it wrong, and suffer. He puts this supposition: suppose the people refused to pay taxes, their lands would be seized and put up to sale, no one would buy, then shooting by the English would begin to compel them to pay taxes, and that would be the suffering contemplated. One cannot but regret that Mr. Das should attribute such a character to the British race. He forgets the intermediate stage, and that shooting would not begin till rioting had begun and that rioting would be the inevitable result of fields lying fallow and the means of sustenance gone; and who would be responsible for the intermediate stage?

Mr. Das also argues that the idea is the same that has been elaborated by European philosophers, that Government cannot exist against the will of the people, and that fact has been the explanation of all revolutions in Europe. The difference is that in Europe rulers and ruled have been of the same race, here they are not.

As an essay this article is a splendid piece of writing. The danger lies in the effect that it might have on ill-balanced and impressionable minds. And that, it is argued, is perhaps the reason why it was not published. The fact that neither of the articles was published is again a point in Arabinda's favour. For though philosophic reflections may show the trend of a man's mind, it very much affects the question whether he is a conspirator or not, if he does not publish writings which, doing no harm to a careful reader, might be misinterpreted by those of less mature understanding.

Mr. Norton lays great stress on the passage where he refers to the other papers, including the *Yugantar* and *Sundhya*, wrongly, I think, as the next sentence shows. The writer says the methods advocated are different, though all have the same ideal, and it is conceded that there is no harm in independence as an ideal: the offence lies in the methods by which it is sought to be attained.

Exhibit 292-8 is a violent piece of writing, written apparently on partition day. It is, however, not Arabinda's, but is in a woman's hand, by the same hand apparently as that which wrote the two accounts, Exhibits 287-1 and 292-9. Arabinda's

name is on both these accounts ; they appear to be for the supply of bazar articles to his mother and Rohini. It would be rather far-fetched to say that the contents of every piece of paper kept by Arabinda reflected his own ideas. If this paper was written by his sister, it must be remembered that she was living with him.

The next class of evidence is letters passing between other persons. Exhibit 182 is a letter from Ram Chander Prohlu to Upen. The point about this is that it is addressed to 23, Scott's Lane. In fact there is nothing to show that Upen ever lived at No. 23, and the question is why Ram Chander should address a letter to him there. The letter is in answer to one from Upen and had reference to the visits of Sishir and Hemendra to Bombay. From the letter one can gather that Upen had written about them to Ram Chander, and presumably, as the answer is addressed to No. 23, Upen must have written from there. Now, with reference to all connection of conspirators with No. 23, we must remember that Abinash also lived there, so the visits of persons there, as well as the addressing of letters there, are always open to the explanation that Abinash was the attraction or the intermediary. It is quite possible that at the time of writing some time in April, Upen had given this address, not wishing that letters should be brought to the garden. At any rate, in Exhibit CVI from Ram Chander to Hrishikesh we have indications that Ram Chander did not know where Upen was. In their letter there is a reference to Arabinda. Ram Chander speaks of him as "a simple, child-like, saintly soul, yet withal burning with a true patriot's passionate enthusiasm, such as I have rarely seen." Then he speaks of Baren and says, "He asked me to go over to Bengal and join them in their work." The sentence is open to two constructions. "Them" might refer to Baren and Arabinda as having a work in which both were interested ; it might refer merely to Baren and his party, without having any reference to Arabinda. I have already referred to Ram Chander and the fact that his name and address is also found in the garden in Exhibit CXVII-a.

Exhibit 385-2 is a letter on which the prosecution lays much stress. It is the letter from Gobin to "brother doctor" found at No. 15. It is written on 24th April 1908. The writer says, "I went to the house No. 23 at 3 P.M., on Wednesday and I came to understand from Karta that you had left the place that very day at that very time after taking your meals there ; when I asked Karta about Baren he said to me that he is in Calcutta, but the address of both him and you were unknown to him. Thank you that you have set up such a Karta (sarcastic)." The prosecution suggests that the house is No. 23, Scott's Lane, and that Karta means Arabinda ; and, as I pointed out before, that "brother doctor" means Upen.

For the defence it is suggested that there was a doctor living at No. 15 just before it was taken by the conspirators (see witness No. 118), and the letter may be one written to the former tenant. It is also suggested that No. 23 may refer to 23, Sib Narain Dass' Lane.

There can be no certainty as to what were the references in this letter. We don't know who Gobin is, but the fact of the letter being found at No. 15, that Baren is mentioned in it and No. 23--23, Scott's Lane, being a place frequently visited by the conspirators--suggest that 23, Scott's Lane, is meant, and the enquiry for Baren from Karta at 23 suggests Arabinda. It could not be Abinash, for in the scheme of the conspiracy it is hardly likely that Abinash should be at the head. Exhibit 1380 is the telegram asking for the key, signed "Birkumar, 23, Scott's Lane." The only point against Arabinda is the address given.

Exhibit 1381 is a telegram from one Sudhir, 19, Choku Khan-suma's Lane. The object is to connect Arabinda with accused Sudhir through the house. Sudhir's brother says the name is not written by Sudhir : there is no reason to think that he is not correct. No. 19 is not the same as No. 19-3, though premises No. 19-3 is probably a portion of what was at some time or other No. 19. There is nothing in the telegram itself.

These two documents do not properly come under this subdivision of the evidence ; they do not mention Arabinda either by name or by implication.

Exhibit 992 I have already referred to. At the worst it suggests some connection between Arabinda and the Midnapur "Chattra Bhandar."

Exhibit 774 is the letter by accused Sudhir to Upen at Seal's Lodge, of 11th March. It is short : "Arrived safe : Sukumar Babu is expected on the 5th or 6th Chaitra ; explained to 'Bara Karta ;' according to his order I ask you to come." In the postscript there is the reference to monkeys. It is suggested that Sukumar Babu is Baren and 'Bara Karta' Arabinda. I have already pointed out in connection with Exhibit CL and with letters being received in the garden, that there is reason to think that Baren was called Sukumar. If by Sukumar in this letter Baren is meant, we have the fact that in two letters, this and exhibit 385-2, "Karta" is mentioned in conjunction with Baren.

It is argued that "Bara Karta" cannot refer to Arabinda, because if Sudhir had seen him the unopened letter Exhibit 300-21 would have been handed over by Arabinda to Sudhir, instead of being carried about from November to May. But Mr. Das' own argument in connection with this letter was that Arabinda was absent-minded.

I now come to documents of other classes said to affect Arabinda.

Exhibit 1099 is a document found at the search of the *Bande Mataram* office in July 1907. It is Counsel's opinion on the question as to what would be the position of the shareholders in case a prosecution were instituted against the paper for sedition. It is argued that this shows that the publication of seditious matter was contemplated. Now no seditious matter published subsequent to their opinion has been shown to me in the *Bande Mataram* and that is curious if the document indicates an intention to publish such, for Counsel's opinion favoured the view that fine was the only penalty that could be imposed on the corporation apart, of course, from any individual liability of the persons directly responsible.

Exhibit 990 is a *Yugantar* peon-book in which apparently Arabinda signed for the receipt of two letters. This is worth nothing as evidence. Taken with this is the letter Exhibit 999 from one Abinash asking for help to print the paper. I have referred to this before. It does not support the view that Arabinda was connected with the *Yugantar*, now taking the view that the letter was written by the accused Abinash and that Arabinda was the addressee.

Exhibit CLXXXIV is the railway guide found in the garden with what purports to be a draft telegram from Ghose at No. 23 : "Wire Charu's address." The prosecution suggests that this is in Baren's writing, but that Baren intended that the recipient of the telegram should understand that it was Arabinda who wanted the information. There was no certainty who Charu was. It is suggested that it was Charu Chander Dutta, the Sessions Judge of Ahmedabad, and that the telegram was to be sent in connection with the visit of Sishir and Hemendra. It is possible that the prosecution suggestion may be right. It may be that Baren sent or intended to send the telegram on his own account and gave the address at 23 to avoid interception in the garden.

Exhibit 792-10 is a slip of paper found in a book at the search of Hrishikesh's house. It bears the words : "19-3, Chokh Khansama's Lane, Mirzapore, 4-10-07." We know Arabinda had this house about this time. With reference to this slip of paper, Kedareswar Chakravarty, who held J. search, says he remembered there were two slips of paper in the book. He did not note them particularly, not thinking them to be of importance, but he remembers each had a name on it, and he pinned them in this book. This slip was not shown to him when examined before the Magistrate, but considering the mass of documents dealt with, this is not surprising. There seems no reason to suppose that the paper has been introduced subsequently. Arabinda denies knowing Hrishikesh before the case began.

Attention was drawn to certain entries in Exhibit 311—1, *e.g.*, entries about Vibrona and Sudhir and Fleriline. These entries naturally would be there if Abinash was managing Arabinda's household as he said. Stress is laid on one entry in particular in this book, "khoka's tram fare Re. 1-8." The importance of this is in connection with Exhibit 299-7, which will be dealt with later.

Exhibits 311-3 and four receipts for the rent of No. 23 were found at No. 48. There is nothing surprising in this: Abinash was living in the *Navasakti* office at the time of the arrest. The receipts don't prove connection with the *Navasakti* office, though they show connection with Abinash.

Exhibit 315-7 is a receipt for the whole of the premises No. 48 for 'Falgun,' the rent being paid by Satyaranjan, the son of Monaranjan. It is argued that as there was no division of the premises, then there was none when Arabinda went to live there. We don't know on what terms the house was occupied when Arabinda and Abinash lived there, but from the fact that the previous owner of the *Navasakti* occupied the inner portion of the premises, we cannot assume that the person who later occupied that portion was in fact interested in the *Navasakti*.

Exhibit 311-2 suggests that Arabinda was connected with the *Navasakti*. This is a set of rules providing that the *Navasakti* is to be managed by a committee which Arabinda is to nominate. It may be that Monaranjan was trying to convert the paper into a company and was putting this forth as an attraction. But the importance of this Exhibit so far as regards Arabinda lies in the supposition that the *Navasakti* was a revolutionary paper. No doubt there was a good prospect of it becoming so when it fell into the hands of Abinash, but we do not know when this scheme was drawn up. That half the income was to be used for serving the country is a provision which gives food for reflection in view of the similar though less liberal provision in the *Chattri Bhandar*.

Exhibit 300-27 found in Arabinda's room is a list of articles for physical exercises. The suggestive part in it is that it includes daggers and single sticks. Exhibit 1098 is a book with the suggestive name "Human Bullets" presented to Arabinda by a brother nationalist in appreciation of his work for nationalism in India. It is dated Tokio, 10th April 1908. The book was found at the *Bande Mataram* office. How far the views of the persons, not shown to be conspirators, as to the nature of Arabinda's work can be taken against Arabinda is open to question. It is not shown whether there is anything of a violent nature in the book beyond the title and the first picture which shows a bursting shell. In connection with a conspiracy, of course, anything connected with war is looked on naturally with suspicion, but in Exhibit CXXIII we find a short appreciation of this work: "It is a wonderful

revelation of the Japanese point of view, in regard to patriotism, obedience, the hereafter, fellowship with those in a subordinate position and magnanimity towards captured enemies. The horror of butchery is curiously mingled with purpose and dignity of mind." Such a book in this case is calculated to bear a somewhat sinister aspect in view of the constant reference in papers connected with the conspiracy to Japan and her success against the Russians; the moral being success of the East against the West.

Possibly the most dangerous piece of evidence against Arabinda that comes under this head is to be found in Exhibit 239. In the entries under 11th January and onwards we find three which may refer to Arabinda. They are "J. B. to be informed of A. G.'s movement. "A. G.'s rules to be got out of him." "Dr. Dhude to be kept in the garden and Ullas and A. G. and B. G. informed." If A. G. refer to Arabinda, this a most damaging piece of evidence. The defence says it is not proved that A. G. stands for Arabinda. It could not be proved. The only person who could and was willing to speak, is Narendra Gossain. He is dead. The other persons to be informed are Ullas and B. G. Evidently the prominent persons are to be informed and we have no knowledge of any other prominent person suggested, who bears those initials. In conjunction with B. G. they are significant.

It is suggested that if A. G. means Arabinda, Barru may have told him they had religious organization for the purpose of concealing facts from Arabinda. That might explain the second entry, but what of the other two?

It is conceded that Arabinda finally came to Calcutta from Baroda about the middle of 1906. His arrival was followed at a short interval by the starting of the scheme for national education, and by the formation of the *Chattrā Bhandar* and *Bande Mataram* companies. Arabinda admits that he was concerned in starting the latter company: in fact he was for a short time managing director, but he does not admit connection with the *Chattrā Bhandar*. In this company Subodh was doubtless largely interested, and a good deal of the case against Arabinda rests on his connection with Subodh. Arabinda's connection with the *Chattrā Bhandar* did not ostensibly go beyond the signing of his name as witness to the signatures of the promoters on the memorandum of association. Nor is there any evidence beyond his intimacy with Subodh to suggest connection with the *Chattrā Bhandar*. Pabitra's account is that the promoters went to Subodh's house to have their signatures witnessed, as he was a big man and his name might attract people, and as Arabinda happened to be there he also signed. So far as Arabinda is concerned this explanation may be perfectly true. A good deal of the suspicion which attaches to his signature is due to the fact that Pabitra is so anxious to conceal his knowledge of this institution, and that

Subodh so shortly after having apparently no interest in it beyond that of a mere witness became so large a shareholder.

Arabinda's association with Subodh is capable of a perfectly innocent explanation. He was much interested in national education, a scheme in which the prosecution admits there was nothing of itself harmful, and we find that Subodh contributed Rs. 1,00,000 to the establishment of the National College.

Arabinda's connection with the garden is sought to be established by the fact that persons from the garden frequently visited No. 23. That Sailendra was more than a mere casual visitor we have evidence of in the post card, Exhibit No. 305-5, which was readdressed to him at No. 23 from No. 49, Grey Street. I have already pointed out that visits to No. 23 of conspirators may be explained by the fact that Abinash was living there.

A good deal is made of the incident of the 18th April, when it is said that shortly after Baren and Abinash left No. 23, Arabinda was seen to open the window. The incident is of very little importance in itself, but it gave rise to much cross-examination intended to show that Arabinda was not in Calcutta on the 18th, having left for Kishoreganj on the previous day. And in due course two of the prosecution witnesses came forward to prove the *alibi*. I am not disposed to accept the evidence on this point of either of these witnesses. One was at Kishoreganj just long enough to see Arabinda on his arrival. He fixes the date by the fact that he reached the place on Friday. He fixes his recollection of the fact that it was Friday, by the fact that the day before was Thursday, but he can fix nothing more. There is a small piece of evidence which to some extent supports the theory that Arabinda was absent on the 18th. A postal peon who came to deliver a money-order did not find him at home, and did not find him at home till the third day. This does not prove that he was absent from Calcutta, and it is unnecessary to pursue the subject further.

A piece of evidence to the effect that he was directly connected with one of the centres of conspiracy is the statement of a postman, witness No. 114, that he saw Arabinda at No. 15. He also identified Narendra Bakshi as seen there, though in the Magistrate's Court he identified Krishna Jiban. These two are somewhat alike. But I do not believe that he saw Arabinda there. It is impossible that a man so closely watched as Arabinda could have visited a place so closely watched as No. 15, without detection.

I now come to deal with what are the really important documents as against Arabinda. Most important of all is Exhibit 295, which is known as the "sweets" letter. It purports to have been written on 27th December 1907, the second day of the Congress, and runs as follows:—"Dear brother; now is the time. Please try and make them meet for our conference. We must have sweets

all over India ready made for emergencies (*sic.*) I wait here for your answer. Your affectionate Barindra K. Ghose." This was found in Arabinda's room. An envelope was also found with "A. Ghosh, confidential," written on it, apparently in Baren's writing. The defence say the letter is a forgery: if it is, it is a splendid specimen of the forger's art. The suggestion of the prosecution is that "sweets" means bombs. The term would be a not unnatural one to use; and in view of Exhibit C1, in which apparently Mr. Kingsford is spoken of as the bridegroom, and the accounts in Exhibit 239, in which under the heading "marriage expenditure" is the item **फिरो** (Riv), Rs. 52, that being abbreviation in the vernacular for "revolver," there is reason in the suggestion. The prosecution argues that the Extremists, having won a victory on the first day of the Congress, were so elated that Baren sent this letter to Arabinda to have immediate action all over the country on the lines followed in the garden and No. 15.

The finding of this letter in Arabinda's house is attacked. In fact the honesty of practically every search conducted in this case has been challenged, though, when it came to arguing the case, very little use was made by the defence counsel of the cross-examinations on the subject of searches. Taken as a whole, the cross-examination in this part of the case seemed to betray an utter want of the sense of proportion. Counsel seemed to forget that the primary object of the police in making a search is to find things: it is not to be constantly considering what to do to meet possible suggestion that will be made later. No doubt it is desirable that the two should be as far as possible combined, but counsel for the defence would have the second made a fetish. Where the findings of a search are few in number, it is easy while making a list on the spot to number or mark everything, but when the papers found run into hundreds and where the searching officers have been waiting up practically all night, it is beyond human nature for them to sit down and spend the whole day numbering and initialling every document on the spot. The main thing is for them to take such steps as will enable them to say afterwards that a particular thing was found at a particular place, and if they do that it should be enough for the Court, which will not start with the presumption that every police officer is dishonest and that every document not marked on the spot is a subsequent interpolation. I take one instance: item No. 84 of the garden search list is "some books found on a shelf and in a tin box, some maps and books in Bengali on modern warfare and pictures and papers." The words after "maps" look as if they have been put in after being somewhat cramped, though evidently written with the same pen. I will assume that they have an explanation which is simple: a large box with a number of books is found, and in turning it over it is discovered that some of the books are of an important nature. The item is amplified by a description of

them. There is nothing dishonest in this, yet if the next item is written down before the addition is made we get charges of dishonesty of all kinds. Probably in the stress of cross-examination the police officer may forget the true explanation and guess. In this instance nothing is gained. The findings at the garden were quite sufficient without the necessity of adding these hooks on modern warfare. The prosecution could have served their case much better by putting them somewhere else. Similarly, because some of the list is written on blank paper and not on printed forms, we get similar suggestion, ignoring the perfectly reasonable explanation that the supply of printed forms was exhausted.

Much stress is laid on the difference in the evidence of Superintendent Creagan and Inspector Radha Gobinda Kundu and Benode Gupta in regard to the examination of documents from 48, Grey Street, as affecting the "sweets" letter. The examination was conducted by Mr. Denham at 25, Royd Street. Creagan says he had the findings of No. 48 in his possession at his house: he took them to 25, Royd Street and some, including the letter in question, were examined and taken back by him to his house. He says he was present at the examination of the documents that day.

Radha Gobinda says that the persons present at the examination were Mr. Denham, Gupta and himself: no one else was ever present. The documents were brought, bundle by bundle, from Park Street and taken back after examination.

Gupta's evidence is confusing. He first speaks of Creagan having brought the documents on the 4th or 5th; then after being questioned about the examination of them, he says: "I kept the documents from 48, Grey Street, after they came to Royd Street, in my custody." Later he speaks of returning documents to Creagan for prosecution in Court. In cross-examination on the first day he said: "It would not be true to my knowledge to say that Creagan kept all the documents found at No. 48 till the 11th May in his house. I don't think it is correct to say that he brought them to Royd Street on the 11th May, and some were examined and taken back to his house." On the second day of cross-examination he stated that Creagan took back the documents which were examined the first day, and said he never had charge of any of them before that day.

Reading his evidence in chief, one would naturally imagine that he had had charge of these documents from the 4th or 5th till they were returned to Creagan finally for production before the Magistrate. It is to be noticed, however, that he does not specifically say where they were between the 4th or 5th and the day they were first examined, nor was he asked. With regard to the statement in cross-examination the first day, the first impression is that he was giving a different version from Creagan. I think the key to the

difference lies in the introduction of the date, 11th May. He is first asked whether it is correct that Creagan kept the documents in his house till the 11th May: he says "No." The next question is one of Mr. Dass' portmanteau questions involving three points of fact: (1) whether Creagan brought documents on 11th May: (2) whether same were examined, (3) whether those examined were taken back. The witness says "No." Now it is quite obvious that to him the gist of the question lay in the date following as it did the previous questions. In fact, it appears that Gupta, speaking from memory, thought the documents were examined before the 10th; and having that impression in his mind, a wrong one as it happens, he naturally answered both the questions put to him in the negative. But the argument that is built on it ignores the fact that he thought the date given was wrong, and is based on that portion of the question which was not prominent in the witness' mind. And read in this light, his answers on the next day of cross-examination are not inconsistent.

Radha Gobinda had evidently not a very clear idea of what he was talking about when he says that no one was present but the three persons named at the examination. He evidently means throughout. The point which the defence wants to make from his answers is that the documents were brought from Park Street to Royd Street for examination. This point is achieved by putting indefinite questions. He is first asked about the general procedure in dealing with the findings at searches, and says that documents were carried backwards and forward between Park Street and Royd Street. Then he is asked some questions about the "sweets" letter. Then he again begins to speak generally as is evident from this sentence, "after the examination was over the bundle was retied, and "if done with" was sent back to "where it came from," namely, Park Street," and again an argument for a special occasion is founded on a statement of a general nature.

Mr. Denham's evidence makes it clear that the papers were brought by Creagan, and that the bundle in which this letter was examined on the 11th May, the first day on which he examined documents from 48, Grey Street. And this, taken with Creagan's evidence, makes it clear that Creagan all along had the documents examined on the day, including the "sweets" letter in his possession; and that it was found in No. 48 is clear from the fact that Creagan initialled it at the time. He does not remember the letter on the 2nd May, but it has his initials: he initialled nothing except at the time of the search, and the search witnesses all signed, and one has added the date, and Creagan says that the rule was for them to initial a document before he did.

It is suggested that the document is a forgery, and it is argued that Sarat Dass is a forger. In fact Sarat Dass denies that he is a forger; for the purposes of the argument it is not a matter of much

moment whether he is or not—from his previous history. Whether a forger himself or not, he doubtless would have no difficulty in getting hold of one. But to my mind the letter could not have been written to Arabinda by Baren. I don't take account of the argument that if both were at the same place, one would probably not write to the other, or that the other would not have preserved the letter: explanations can easily be found for both these points. But I judge from the internal evidence of the letter. Baren is the youngest of five brothers; Arabinda is the third. The Assessors say that in such a case Baren could not have intended Arabinda by "Dear brother"; that expression could only mean the eldest brother: if meant for Arabinda, it would have been "Dear Sejda." That is a point on which I cannot question their opinions. But, speaking for myself, I cannot understand Baren signing his name in full if writing to Arabinda. In letters between Arabinda and other relations Baren is spoken of as Bari. The brothers were on friendly terms; they must have been if the prosecution theory is to be accepted that the visits to No. 23 were to Arabinda, and it is highly improbable that Baren would sign in this way writing to Arabinda. He might write to some one else and use the phrase "Dear brother," corresponding to the use of the word *bhai* in the vernacular. In such a case, if it was intended to reach Arabinda, the question suggests itself, if both brothers were at Surat, why did not Baren write to Arabinda direct. That the word "emergencies" is spelt "inergencies" is nothing, for in Exhibit 667 Baren spells "philosophy as phylosophy." Though, then, I find that the document was in fact in Arabinda's house on the 2nd May, it is of so suspicious a character that I hesitate to accept it. Experience tells us that in cases when spies are employed documents do find their way into houses of suspected persons in a manner which cannot be explained by the accused.

Another important document found in Arabinda's house is Exhibit 299-7. This is a page of scribbling in a note-book, mere incoherent rambling. In it there are references to Bhaba Bhusan, Khoka, Baren, Sudhir, Profulla. It speaks of and suggests that there will be success next time if the writer is present instead of trying to hide himself: and of a "small charge of the staff."

The prosecution suggests that these are the ramblings of a visionary communing with himself and letting his hand run idly over the paper, trying to pluck up courage to make some attempt in person, disappointed at the ill-success which had attended attempts by other conspirators. It is pointed out that the names are all names of persons connected with the conspiracy or found in documents relating to it. And it is argued that it could not be a forgery, as Bhaba Bhusan's name was not known before.

In regard to this last point, it must be noticed that Exhibit

1089, a letter by Bhaba Blusan, was found so far back as August 1907.

The other argument the defence does not answer : in fact it is a very difficult argument to answer, depending as it does on supposition. It is, however, pointed out that the book is a very old one, not one likely to come to Arabinda's hand if he sat down to scribble in an aimless way. The scribbling bears no resemblance to his writing : it is formless, and such as any one might write.

Arabinda says the scribbling was not in the book while in his possession. The suggestion is that it was forged later. There is no reason to suppose that it was. The documents were in the custody of the District Magistrate's Court office from the date of filing. This note-book was filed on the 20th May. It could not have been forged before that or the Magistrate's attention would have been called to it at an early date ; therefore, if forged, it must have been done while the books were in his Court. There is no reason to suppose that any person likely to forge it had access to the books. The scribbling was not discovered till August by Mr. Denham, but that is not a matter of surprise, considering the mass of documents to be examined. This would naturally escape notice, being in an old book and apparently nothing of importance unless closely examined. On the other hand, if Exhibit 295 was inserted among Arabinda's papers before the 2nd May, this book may in the same way have been abstracted and replaced there. Again, the long delay in discovering it suggests that it was not made for a particular purpose, though the mind that was crafty enough to evolve the plan of manufacturing such a piece of evidence would be equal to the desirability of such an entry in an old and apparently useless book not being brought to light too soon. I look upon this piece of evidence as the most difficult point in this case.

Exhibit 300-21 was found in Arabinda's house in an unopened envelope, addressed to Sudhir Kumar Sircar, c/o late Raj Narain Bose, Esq., Baidyanath, Deoghar, and across the envelope is written "Confidential." The envelope bears the Baidyanath postmark of 24th November. It was opened by Mr. Denham on 11th May. The point of this is to prove that Arabinda knew Sudhir, the accused. Sudhir says that he stayed at Deoghar for two or three weeks after the Pujas, and that in March he put up at Raj Narain Bose's house. We know that Arabinda was at Deoghar in November. It does not follow that the two were there at the same time. On the contrary, the fact that the letter was not delivered to Sudhir at Deoghar suggests that he was not there when the letter arrived. In paragraph 17 of his written statement Arabinda gives an explanation as to how Sudhir stayed for a short time at Deoghar. He says he does not remember even seeing the letter. There are two possible explanations for this letter being in Arabinda's possession—one that he took it expecting to see Sudhir

and to give it to him, the other that he took it accidentally among his papers. In the former case one would naturally expect Arabinda to give the letter to Sudhir when he saw him. But his counsel says that Arabinda is absent-minded. That might explain why Arabinda did not give the letter; it might also explain its accidentally coming to be among his papers and being overlooked. The contents of the letter do not affect Arabinda in any way.

There is one more important letter by which it is thought to connect Arabinda with the garden. This is Exhibit 1128, a letter from Birendra Chandra Sen to Arabinda, saying that the writer's father is ill and wants to see Sushil, and mentioning that some money is being sent. The letter states that as Biren does not know Arabinda's Calcutta address, he is addressing the letter to Baidyanath. Arabinda says he never received the letter. He says that he only knew some of the accused, whom he names, before his arrest; Sushil is not one of those. This letter was written from Baniachong on the 26th April 1908. It was found in the garden.

Exhibit 905 is a money-order for Rs. 8, payable to Arabinda Ghose. It is addressed to the house of the late Raj Narain Bose, Baidyanath, Deogher. It was re-addressed to 23, Scott's Lane, then to 6, College Square. The receipt was signed by Sarojini Ghose on the 8th May. The money-order bears the Harrison Road stamp, dated 5th May, and the Bowbazar stamp, 8th May. This is money-order No. 240, for which the post-office receipt, given at the time of sending to the sender, was found in the house of the Sems.

The prosecution suggests that the money-order represents the money which the letter says is being sent. The defence suggests that it can't be because of the difference in date, while the letter says money is being sent. The expression might apply to money which was about to be sent just as well as to money actually despatched. It is not really material whether the letter refers to the money-order or not. The point is that the letter was found in the garden.

It is said to be item No. 2 of the search list, "a piece of paper with Bengali writing (in the pan)." This pan was found in the verandah of the house and contained six brown balls, apparently moulds for casting shells. The letter found its way to the Chemical Examiner, in the pan, and was handed over by Major Black to Mr. Denham.

It is suggested that this letter is not the document that is mentioned in the search list. It is initialled and dated 2nd May by Satish Roy, who was making the search list, and also by Mr. Corbett, who superintended the search, and Inspector Frizzoni. The names of the search witnesses on it shows nothing, for they were called to the thana after the search to initial documents, which were pointed out as found at the search. It is open to

doubt whether Satish Roy can remember, as he says he does, that it had Arabinda's name on it. If he had then noticed, then it is probable that more notice would have been taken of it. I think it very doubtful whether he read the name at the time. Considering the immense quantity of things that had to be dealt with in the garden, it is probable that Frizzoni merely dictated what is written in the search list and Satish wrote it down.

That it was then found there there seems no reason to doubt. Mr. Corbett would certainly not have initialled the document unless found then.

Much is made of the fact that it was not found when Gupta was taking over charge of the exhibits. According to him there was some discussion between himself and Satish about it. He asked Satish for it. Satish said it was in the pan, and Gupta, not seeing it, said it was not. Apparently neither of them thought of emptying the balls out of the pan, and, when folded, the letter would be easily concealed by these balls. The material objects were kept separate from the documents, and such as were to be sent to the Chemical Examiner were sent before the documents were examined.

It was argued that the letter could not have reached Calcutta in time to be in the garden. Even supposing the letter went to Baidyanath *via* Calcutta, and there is nothing to show whether a letter from Sylhet would go through Calcutta to get to Baidyanath, there would be time for the letter to be re-directed and reach Calcutta before the 2nd. To my mind the prosecution attaches unnecessary importance to the finding of this letter in the garden. It is out of the question that Arabinda took it there himself, for if he had gone there, some one is sure to have seen him going. And if he gave it to some one else to show to Sushil, it does not follow that he expected Sushil to be found in the garden.

What then are the chief points against Arabinda? In the letters we have the ambiguous references to the movement requiring unlimited money and Abinash no longer doing Arabinda's work. As regards association with persons, we have the fact that he was a friend of Subodh, that he was acquainted with Lele and Ram Chandra Prabhu, that he employed for the purpose of looking after his house Abinash, who is a conspirator, the possibility that he knew Upen and Birkumar, a name appearing in the garden, because a letter comes for the first to No. 23, and a telegram from some one giving the name Birkumar goes from the second from No. 23, the possibility that he knew Hrishikesh by the finding in the latter's house of the slip with the address 19-3, Choku Khunsama's Lane and the probability that he knew Biren Sen and Sushil, and knew the where-

abouts of the latter at the end of April. As regards connection with association, we have the suggestion that he was connected with Midnapur Chattra Bhandar, arising out of the reference to him in the letter of Manik to Nikhil; as regards association with the garden, we have the fact that he was part owner of the garden, but no evidence that he even went there. It was argued that he did not attempt to sell it, as he wanted it to be kept for the purposes of the conspiracy. He says that he asked people to try to sell it, and, so far as one can gather from his letters and writings, personal attention to business is not what one would expect from him. There is the further fact that three entries with the initials A. G. were found in the garden Exhibit 239, and that the draft telegram, which may be his, was found in a book in the garden. As regards No. 15, there is the finding of No. 385-2, a letter which was not addressed to him; and as regards knowledge of the conspiracy, there is this letter 385-2 and Exhibit 774, and they only connect him with the conspiracy if it be clearly established that he is the Karta referred to. In the case of the first letter, I have pointed out that there is reason to think he is the Karta because of the mention of Baren and No. 23. But it is not clear who was the writer or who was the addressee, and its connection with the conspiracy can only be assumed from the fact of its being found at No. 15 and the mention of Baren. The other contains direct reference to a garden and, being addressed to Upen at Sil's Lodge, doubtless has connection with the conspiracy. And further, as regards knowledge of the conspiracy, there is the piece of scribbling found in the old note-book in his house.

I should hesitate before saying that his complicity in the conspiracy can be considered established on these facts.

In his favour we have the fact that he has in the columns of the *Bande Mataram* deprecated violence; there is such an article dated 28th May 1907. And so late as 10th April 1908, there is an article saying that the national movement cannot be allowed to be driven inward and made an affair of a secret society as it would if outward expression were stopped. His connection with the conspiracy can only be considered established if we find that while writing one thing he has been doing another.

Of course it is possible that a man might join a conspiracy to deprive the King of the sovereignty of British India, in which his share would be to preach discontent with the existing order of things, and that he might be entirely ignorant of that branch of the conspiracy which concerned the collection of arms and ammunition. It is possible that Arabinda may have been in that position in this case, but in such a case it must be clearly shown that his preachings were part of such a conspiracy, and in the present case it would be difficult to do that without showing some

connection with the part which the garden plays in the case. Considering the circumstances of India, it may be dangerous for a man to publish doctrines inconsistent with the existing order of things: in certain circumstances it might justify a charge of sedition. Whether such a charge could be laid at Arabinda's door does not now concern me. The point is whether his writings and speeches, which in themselves seem to advocate nothing more than the regeneration of his country, taken with the facts proved against him in this case, are sufficient to show that he was a member of the conspiracy. And taking all the evidence together, I am of opinion that it falls short of such proof as would justify one in finding him guilty of so serious a charge.

In dealing with this case generally, I have endeavoured to work on broad lines rather than to elaborate petty details, which would have confused the real issue in a judgment which has already grown to excessive length. I have not, in dealing with Arabinda's case, referred to the Midnapore incident, nor to his connection with the fund for the support of Basanta's family, during Basanta's imprisonment, for these do not affect the main issue. One word with reference to his connection with the meeting to welcome Bepin Chandra Pal on his release from jail. Whether his views agree with Bepin's or not, there is nothing calling for comment in the fact that he joined in welcoming a man imprisoned for refusing to give evidence in a case in which Arabinda was the accused.

A few words as to the opinion of the Assessors. One of them speaks of this conspiracy as a "childish conspiracy." He seems to have utterly failed to realise the significance and danger of it or the extent to which it had spread. The Assessors evidently dislike the idea of a conspiracy; while both find that certain persons collected arms in circumstances which amount to an offence under section 122; one of them thinks that the collections were made by persons independently of each other. In fact, the offence under section 122 is more serious than that under section 121A, involving, as it does, forfeiture of all offender's property as a compulsory sentence.

As to the application of section 121. Reading section 121A with the second clause of section 107, I. P. C., it is clear that a conspiracy to wage war becomes an offence under section 121 if any act is done in pursuance of the conspiracy, and in order to the carrying out of the purposes of the conspiracy. And explanation 5 of section 108 further elucidates the second clause of section 107.

The overt acts by which it is sought to convert the offence under section 121A to the offence under section 121 are the three attempts on the Lieutenant-Governor and the Muzaffarpur outrage, which was an attempt on the life of Mr. Kingsford. Mr. Das contends that as section 124 provides for a criminal attempt made

on a Lieutenant-Governor for the purpose of compelling him to exercise or refrain from exercising any of his powers, it could not be intended that such should also amount to an offence under section 121. He admits that criminal force to a Lieutenant-Governor will amount to an offence under section 121, but only if the act of force is in itself an act of war, and he relies on a passage from Collet's comments on the Indian Penal Code: "We conceive that the last words (*i.e.*, of section 121A) do not go beyond the scope of section 121." He also contends that English cases do not help the consideration of this case, because while under the English statute of treason, all the offences mentioned in sections 121-123 are included in the term "levying war," the Penal Code has made separate provisions for each branch of the subject, and section 121 is unambiguous in its terms, and waging war means the actual formation of battle array and fighting. This argument involves a *petitio principii*: we cannot seek the help of English cases to show what levying war means because waging war under section 121 has the meaning which he claims for it.

I take section 121A to be an amplification of what is meant by waging war in section 121. But to say that the offence of waging war is only completed with the formation of battle array and the commencement of hostilities is to claim a meaning for those words which, to my mind, is far too narrow. It might have been a correct interpretation in the Middle Ages, but, as was pointed out by the Judges in the case of *Rex v. Gallakar*, the resources of modern science are such that that can now be done by a few, which originally could only be done by an army. In that case there was an attempt to blow up the Houses of Parliament. An attempt to blow up a Lieutenant-Governor for following a certain line of policy is just as much an act of war as an attempt to blow up Parliament. The attempts on Sir Andrew Fraser were due not to one single official act of his, but were an attack on a policy, the object of which was to stop revolutionary writing in the Press, and the attempts were made to defend one of the methods by which the conspirators sought to encompass their ends. Any attempt on the King's Ministers to compel or prevent a certain line of policy or form of government is an attempt on the sovereignty of the King and, as such, amounts to a waging of war.

The fact that section 124 makes a criminal attempt on a Lieutenant-Governor a particular offence does not militate against this view. That section would meet the case of an attempt by an individual not a member of, or in pursuance of, a conspiracy, or of an attempt made to compel or restrain the exercise of his powers in some individual case as distinct from a particular policy. And this overawing of certain high officials, which amounts to a State offence, finds its counterpart in section 189 in the case of minor officials.

The attempt, however, on Mr. Kingsford stands on a different footing. It is true that Mr. Kingsford had earned the hatred of the conspirators for his convicting some of the persons instrumental in spreading revolutionary ideas, and their conviction was a blow to the methods of the conspirators. But here there is no question of a line of policy pursued by one of the King's Ministers. His acts convicting the accused were individual acts of a judicial nature. At the time of the attempt he had ceased to be Chief Presidency Magistrate, so was no longer in a position to check the work of the conspiracy by sentencing those who preached revolution. In his case the act looks more like an act of revenge than one in furtherance of the conspiracy. There is another point of view that might be taken. It might be said that as an act of terrorism it was in pursuance of the conspiracy. But to convert a conspiracy into an abetment the overt act must be not only in pursuance of the conspiracy but in order to the doing of the thing, *i.e.*, in their case to the doing of one of the things mentioned in section 121A. Then, if it is to apply to any, it must clearly be to the first act contemplated in section 121A, *i.e.*, to commit one of the offences under section 121. It cannot be said that to kill Mr. Kingsford was in order to the waging of war. I am therefore of opinion that the attempt on Mr. Kingsford was not such as to convert the conspiracy into an abetment of waging war.

It follows then that while all of the persons whom I have found to be members of the conspiracy are guilty under sec. 121A, only those will be guilty under section 121 who joined the conspiracy before the 5th December, the last day on which an attempt was made on the Lieutenant-Governor. And those the evidence that I have already set out shows to be Baren, Upen, Ullaskar, Bibhuti, Hrishikesh, Biren Sen (the date in the book of the explosive fixes it in his case), Sndhir, Indra Nath, Abinash, Sailendra and Hem Chandra Dass. The absence of the lastnamed from India till the beginning of 1908 seems to suggest that he could not have belonged to the conspiracy before that, but Baren's confession shows that his object in going to Paris was also to learn explosives as well as mechanics, and the fact that he was in touch with the conspiracy immediately on his return and the mention in his letter of the work that he had to do supports Baren's statement. Of the above-named Baren, Ullaskar, Bibhuti are guilty of waging war, as they were actually concerned in specific attempts; the others are guilty of abetment of waging war. Section 122 is very wide in its terms. It includes not merely the collection of men, arms and ammunition, but preparation of any sort, with the intention of waging war or of being prepared to wage war. It seems to contemplate a stage intermediate between the stages covered by sections 121A and 121. The accused whom the evidence establishes to have committed the offence under this section are Baren, Upen, Ullaskar, Indu Bhushan, Bibhuti, Hem Chandra Dass, Poresb, Sishir, Hrishikesh.

Nirapada, Biren Sen, Indra Nath, Sudhir and Sailendra. The liability of the last two named under the section is established by their presence at Sil's Lodge.

The result is that agreeing with both Assessors, I find the accused Barindra Kumar Ghose, Indu Bhusan Roy, Ullaskar Dutt, Upendra Nath Banerji, Bibhuti Bhushan Sarkar, Hem Chandra Dass, Hrishikesh Kanjilall guilty under section 122, I. P. C.; and agreeing with one and disagreeing with another, I find Poresch Chandra Maulik and Sudhir Kumar Ghose guilty under section 122, I. P. C. Disagreeing with both, I find the following guilty under sections 121 and 121A :—Barindra Kumar Ghose, Upendra Nath Banerji, Ullaskar Dutt, Bibhuti Bhushan Sarkar, Hrishikesh Kanjilall, Hem Chandra Dass, Birendra Chandra Sen, Sudhir Kumar Sarker, Indra Nath Nandi, Abinash Chandra Bhattacharjee, Sailendra Nath Bose ; and the following guilty under 121A : Indu Bhusan Ray, Poresch Chandra Manlik, Sishir Kumar Ghose, Krishna Jiban Sanyal, Asok Chandra Nandi, Bal Krishna Hari Kane, Sushil Kumar Sen, Nirapada Ray ; and the following guilty under section 122 :—Nirapada Roy, Birendra Chandra Sen, Sudhir Kumar Sarkar, Indra Nath Nandi and Sailendra Nath Bose. Agreeing with both Assessors, I find the following not guilty under section 121 :—Indu Bhusan Poresch, Sishir, Krishna Jiban, Nirapada, Asok, Kane, Sushil ; and the following not guilty under section 122 :—Krishna Jiban, Asok, Kane, Sushil, Abinash.

Agreeing with both, I find Naren Bakshi, Sailendra Kumar Sen, Nalini Kanta Gupta, Purna Chandra Sen, Bijoy Kumar Nag, Kunja Lal Shaha, Hemendra Nath Ghose, Dharini Nath Gupta, Birendra Nath Ghose, Bijoy Bhattacharji, Hem Chandra Sen, Probhush Chandra De, Dindoyal Bose, Nikhileswar Roy Manlik ; Deba Brata Bose, Arabinda Ghose not guilty under sections 121, 121A and 122 ; and all accused persons not guilty under section 123.

I should here deal with some legal objections taken to the jurisdiction of the Court to try the accused. First, Mr. Das argued that the accused had a right to be tried by Jury, and that the Criminal Procedure Code, so far as it provides for trials with the aid of Assessors, is *ultra vires*. I declined to hear Mr. Das, as an exactly similar point was raised a short time ago before the Special Bench of the High Court and rejected.

The next point was that Mr. Birley had no jurisdiction to commit the case, and that the only Magistrate having jurisdiction was the Chief Presidency Magistrate. A similar point was raised at the beginning of the hearing, but in the arguments at the end an additional point was taken, [which was not raised at the beginning, as it should have been, for it might have made a very great difference, viz., that objection was taken to Mr. Birley's jurisdiction

when he first began the inquiry ; for if objection was taken, the section 532, C. P. C., would not cure the defect. But I do not see how the fact that Mr. Thornhill issued search warrants can affect Mr. Birley's jurisdiction : Mr. Birley could only take cognisance on complaint made under section 196, C. P. C., and when the sanction of Government was given the complaint was made to Mr. Birley who had local jurisdiction.

Then it was contended that the trial was bad for misjoinder. First it was argued that the accused were being tried for more than three offences of the same kind, the argument being based on the ground that the prosecution sought to convert the conspiracy into an abetment of waging war, or into actual waging of war, by alleging four overt acts, viz., three attempts on the Lieutenant-Governor and one on Mr. Kingsford. It was argued that the allegation of four overt acts amounted to four separate charges, and the well-known case of *Subramania Aiyar* was referred to. In that case there was a charge of conspiracy to commit fraud, and more than three separate acts of fraud were included in the charge. As conspiracy is not a criminal offence in India, except when the conspiracy is the one contemplated in section 121A that charge had to go out, and the practical effect was that the accused was tried at one trial for more than three separate acts of fraud. Here the case is different. However many overt acts a man may commit, they only amount to one waging of war. Each by itself might be sufficient to bring him within the section, but all combined would amount to only one waging of war. To take an example. Suppose a body of insurgents marched from Patna to Calcutta, and on the way fought four engagements at intervals of several days. Though they might be tried and convicted of waging war on the facts of any one engagement by itself, yet the effect of being concerned in four engagements would still be only one waging of war. The four engagements would severally be different acts in the same offence. And, I take it, the *ratio decidendi* is that the four engagements would really be part of the same transaction. When we talk of one transaction as applied to the offence of waging war or conspiracy to wage war, it is clear in the very nature of things that the word must have a wide meaning. In fact, when the conspiracy was once formed, any act done in furtherance of it might, properly speaking, be said to be part of the same transaction. And so far that comes within the definition which the Bombay High Court has put on the word 'transaction', "continuity of purpose and continuity of action." It is continuity of action, for when a conspiracy has once been formed the act of conspiracy goes on till the conspiracy is dissolved, though there may be many intervals during which the conspirators are not actively engaged. And this shows that section 239, C. P. C., is applicable to this case : for it was argued that there was also a misjoinder of persons.

In connection with this argument a Bombay case was referred to in which certain police officers had committed distinct acts of extortion while engaged in the same enquiry. It was decided that they could not be tried together. Mr. Das argues that this case is in his favour, because the police officers were actually engaged in the same transaction, viz., the same enquiry. But then the same transaction in that case was not in itself an offence. When section 239 speaks of a transaction, it obviously means such a transaction as is an offence in itself. In the Bombay case there was no connection between one act of extortion and another.

But, says Mr. Das, let us leave out of consideration the charge under section 121A, and then we shall see that there is misjoinder in respect of persons and charges. But we cannot leave out the charge under section 121A. The conspiracy is the very foundation of the case, and it is the fact of the conspiracy which brings the various accused persons together. No doubt a person cannot be convicted for both committing an offence and for concealing the offence which he commits. And on the strength of that fact it is argued that charges under section 121 and section 123 cannot be joined. Section 123 doubtless contemplates the concealment by a person, not a member of the conspiracy, of the design entertained by others to wage war. What the prosecution says is "we can prove certain facts, and on those facts it is for the Court to decide whether the person implicated can be held to be a member of the conspiracy or merely to have had a knowledge of the design and concealed it". And in this case, which is provided for by section 236, C. P. C., if there were no charge but the charge under section 123, clearly only one person could be tried at a time; for the concealment of his knowledge by A is a separate offence from the concealment of his knowledge by B. But if A and B are being jointly tried for conspiracy, it is clear that an alternative charge of concealing his knowledge under section 123 can be added against either, in case the facts proved are insufficient to establish his complicity in the conspiracy; and as the charge can be added against either, it can be added against both.

It appears, then, that there is misjoinder neither of persons nor of charges.

I omitted to mention one point raised in connection with Mr. Birley's jurisdiction. It was that he had begun the enquiry before the sanction of Government was received. On this it was argued that his whole proceeding was without jurisdiction. Now, as soon as sanction was given, he obviously had jurisdiction, and if his record be looked at, it will be seen that on the second day of the enquiry the evidence given by the first witness, before the sanction was received was repeated.

It is a matter of satisfaction that I am able to come to the con-

clusion that the proceedings are not without jurisdiction or the trial bad—not merely because of the immense waste of public time and money which would have taken place, but in the interests of those accused against whom I have found the charges not proved; for if the trial be bad for misjoinder of persons or charges we are taken back to the stage at which the persons were committed by Mr. Birley and all would have to be tried again, for there having been no trial, there would have been no acquittal. If Mr. Birley's commitment was without jurisdiction, we are thrown still further back to the stage when the Government sanction was given to complain.

This case has lasted much longer than it ought to have either on account of its importance or the novelty of the charges. For this I think both sides are to blame. The prosecution introduced incidents and numerous documents which really had no bearing on the case. I understand that there had not been time to examine many of the documents, and perhaps it was necessary for purposes of expediency that the trial should begin without delay. On the other side the cross-examination was far more minute than was necessary, and would have been just as effective if reduced by one-third. In a case of conspiracy with extensive ramifications one is bound to give counsel considerable latitude in this respect, and when one does it is a matter for regret that the Court's confidence should be abused.

The case has caused me considerable anxiety on account of its importance, its difficulty, and partly also on account of the circumstances in which it was launched. The tragic circumstances immediately preceding the searches and the nature of the materials found at those searches have inevitably created a feeling of prejudice in the minds of the public before whom one at least of the accused had for some time been a conspicuous figure. In the attempt to avoid prejudice I may have been led too far in the other direction and under-estimated the effect and value of certain facts, but if I have made this mistake, I have at any rate the consolation of knowing that the mistake is on the right side.

The question of sentence has also caused me much anxiety. Only one of the accused whom I have found guilty is over 30; some of them are under 20. For many of them one cannot help being sorry, feeling as one does that they are young and impressionable, and that the persons who ought really to be in the dock are the persons responsible for filling them with the ideas which they entertain—persons who, whether they call themselves Moderates, or whether having the courage of their convictions they call themselves Extremists, are alike in this that they constantly attribute to Government the worst possible motives and vilify its officers regardless of fair criticism; such persons who hold public meetings in honour of, and exalt as a national hero, a boy who has been

whipped for assaulting the police in the execution of their duty.

Those responsible for this conspiracy did their work well: they realised that their best chance was to get hold of the youth of the country and inflame them by appealing to their sense of religion and their sense of chivalry, and to this end they have prostituted the teaching of their sacred books and represented that under English rule the chastity of their mothers and sisters is not safe.

No Englishman worthy of the name will grudge the Indian the ideal of independence; no Indian of decent feeling but will deprecate the methods sought to attain it. The danger of a conspiracy such as this lies not so much in its prospect of success as in its fruition. When once the poison has entered into the system it is impossible to say where it will break out or how far-reaching will be its effects.

The offence under section 121 is the most serious in the Penal Code except that of murder by a life-convict: and the Criminal Procedure Code provides that where a person is convicted of an offence for which the capital sentence is provided as a punishment, reasons must be given if such a sentence is not passed. Where a number of persons are associated in an offence for which a capital sentence is provided, it is the practice of the Courts to differentiate as far as possible between them to avoid the necessity of passing an irrevocable sentence.

Of the 11 persons whom I convict under section 121, there stand out conspicuously Baren, the leader, Ullaskar, the manufacturer of explosives, and Hem Chandra Dass, the other chemist, who is perhaps the most sinister figure in this conspiracy. It is in favour of Baren and Ullaskar that they made confessions: they say it was to save the innocent; and if that were really their object, they deserve full credit for it. On the other hand, the case against them was so strong from their being found in the garden, of which Baren was part owner, that Baren at any rate had little hope of escape, confession or no confession. Certainly in his case the confession was not prompted by any feeling of remorse: he gloried in what he had done. And neither of them has disclosed the full extent of the conspiracy or the names of other associates, except those arrested with them. Not that this concealment indicates depravity, rather the contrary. In both cases the confessions were withdrawn, but for this their legal advisers are doubtless responsible, for neither of them has denied the truth of his confession. At the same time neither has shown any contrition for the part he played, or for the persistent attempts to do away with a Lieutenant-Governor of whom the last thing that could be said was that he was unsympathetic. It may be that the Government which the accused have tried to overthrow will adopt a merciful attitude

towards these misguided young men, but the Court has a painful duty to perform, to make it clear that attempts to overthrow the sovereign power cannot be made with impunity. I convict Barindra Kumar Ghose and Ullaskar Dutt under section 121 of waging war on the King and sentence them to be hanged by the neck till they are dead and to forfeit all their property. Hem Chandra Dass deserves little mercy, but in his case there is the fact that he was not in India when the actual acts of war were committed. I think, therefore, I may stretch a point in his case, as in the case of Upendranath Banerji, Bibhuti Bhusan Roy, Hrishikesh Kanjilal, Birendra Chandra Sen, Sudhir Kumar Ghose, Indra Nath Nundi, Abinash Chandra Bhattacharji and Sailendra Nath Bose. I convict all these under section 121, Bibhuti of waging war, the rest of abetting in the waging of war, and sentence them to transportation for life and to forfeit all their property. It is unnecessary to pass any separate sentence under the other sections under which I convict these persons.

Indu Bhusan Roy is just as bad as any of the above-named persons: he actually took part in an attempt, though not on a British official. I convict him under sections 121A and 122, and sentence him to transportation for life and to forfeit all his property.

In the case of the rest a distinction may be made, they not being guilty under section 121 nor concerned in any actual attempt on life. I convict Paresch Chandra Maulik, Sishir Kumar Ghose, Nirapada Roy under sections 121A and 122, and sentence them to transportation for ten years and to forfeit all their property. But for their ages the sentence would be heavier.

The other accused whom I convict are convicted only under section 121A. All are under 20, but the offence is serious. I sentence Asoke Chandra Nandi, Bai Krishna Hari Kane, and Sushil Kumar Sen to transportation for seven years. Krishna Jiban Sanyal, who, as I pointed out before, was trying to escape from the conspiracy, may be dealt with leniently on that account, and because of his age—he is only 16—I sentence him to rigorous imprisonment for one year.

I acquit the remaining accused and order them to be set at liberty.

With regard to the boys who have escaped these very serious charges, I would express a hope that their parents or guardians will exercise a more effective control over them than they seem to have done in the past, and not allow them to mix themselves up with matters which they are not fitted to understand.

In conclusion, I must thank Mr. Birley for his really excellent commitment order. I believe that practically without assistance

he disentangled the mass of important facts and documents to which he referred in his order from the chaotic state in which they then were, and produced a really first-class piece of work.

The 6th May 1909.

C. P. BEACHCROFT.

DECLARATION OF PRESSES.

Press.	Owner.	Where.	Date of declaration.	Papers printed according to declaration of papers.
Keshub Printing Works	Keshub Ch. Sen Gupta	7, Sanitram Ghose's Lane	25-3-1904	<i>Sandhya</i> till 9-7-1907. <i>Bande Mataram</i> , 21-8-1906 —22-10-1906.
Saraswat Press ... (Name changed to Sinha Press.)	Kartik Ch. Nan	193, Cornwallis Street ...	24-11-1905	
	Nikunja Lal Dutt	Ditto	16-11-1906	
	Satish Ch. Dass	Ditto	14-5-1907	
Kamala Printing Works	Surendra Nath Sinha	23, Sib Narain Dass' Lane.	6-9-1907	<i>Sandhya</i> , 15-7-1907—30-6-1908.
	Bireswar Prasanna Sen	36, Banamali Sarkar's Street.	13-2-1906	<i>Ugantar</i> , 30-7-1907—30-10-1907.
	Harish Ch. Ghose	27, Kanai Lal Dhar's Lane.	22-5-1906	<i>Ugantar</i> , 12-3-1906—28-5-1906.
	Ditto	41, Champatala 1st Lane	29-10-1906	<i>Ugantar</i> , 21-5-1906—5-11-1906.
Sadhana Printing Works. (Name changed to Sumati Press Printing Works.)	Abinash Ch. Bhatta-charji.	Ditto	6-5-1901	<i>Ugantar</i> , 5-11-1906—9-7-1907.

DECLARATION OF PRESSES—*concl'd.*

Press.	Owner.	Where.	Date of declaration.	Papers printed according to declaration of papers.
Sadhana Printing Works. (Name changed to Sumati Printing Works.)	Abinash Ch. Bhattacharji. Nikhileswar Roy ...	176-3, Bow Bazar Street 5, Ramdhan Mitter's Lane.	5-7-1907 5-9-1907	<i>Yugantar</i> , 9-7-1907—30-7-1907. <i>Yugantar</i> , 21-1-1908—21-5-1908.
Classic Press	Ditto B. L. Chakravarti ...	68, Manicktola ... 55, Corporation Street ...	1-4-1908 No declaration found.	<i>Yugantar</i> , 21-5-1908. <i>Bande Matarani</i> , 6-8-1906—21-8-1906.
				<i>Sandhya</i> , 9-7-1907—15-7-1907.
	Ditto	48-1-9, Corporation Street	30-6-2908	<i>Sandhya</i> , 20-6-1908.
<i>Bande Matarani</i> Press	Sukumar Sen ...	2-1, Creek Row ...	13-10-1906	<i>Bande Matarani</i> , 22-10-1906.

(Sd.) C. P. BEACHCROFT,

A. S. J.

DECLARATION OF PAPERS.

Paper.	Where.	Printed by whom.	Date.	Where.	Published by whom.	Date.
<i>Sandhya</i> — (20-11-1905) (daily).	193, Cornwallis Street.	B. B. Upadhyā ...	20-11-05	20, Cornwallis Street	B. B. Upadhyā	20-11-05.
	Ditto ...	H. C. Dass ...	19-2-07...	193, " "	H. C. Dass ...	19-2-07.
	55, Corporation Street.	Ditto ...	9-7-07 ...	55, Corporation Street.	Ditto ...	9-7-07.
	23, Sib Narain Dass' Lane.	Ditto ...	15-7-07...	23, S. N. Dass' Lane	Ditto ...	15-7-07.
	Ditto ...	M. N. Chatterji ...	28-10-07	Ditto ...	M. N. Chatterji	28-10-07.
<i>Yugantar</i> (weekly).	Ditto ...	J. N. Sen ...	20-2-08...	Ditto ...	J. N. Sen ...	20-2-08.
	48-1-9, Corporation Street.	Ditto ...	30-6-08...	48-1-9, Corporation Street.	Ditto ...	30-6-08.
	36, Banamali Sarkar's Street.	Bhup. N. Dutt ...	12-3-06...	27, Kanai L. Dhar's Lane.	B. N. Dutt ...	12-3-06.
	27, K. L. Dhar's Lane.	Ditto ...	28-5-06...	Ditto ...	Ditto ...	Do.
	41, Champatala 1st Lane.	Ditto ...	5-11-06...	41, Champatala 1st Lane.	Ditto ...	5-11-06.

DECLARATION OF PAPERS—*contd.*

Paper.	Where.	Printed by whom.	Date.	Where.	Published by Whom.	Date.
<i>Yugantar</i> (weekly).	41, Champatala 1st Lane.	H. C. Ghose ...	6-5-07 ...	41, Champatala 1st Lane.	H. C. Ghose ...	6-5-07.
	176-3, Bow Bazar ...	Ditto	9-7-07 ...	28-1, Mirzapur Street	Ditto	9-7-07.
	23, S. N. Dass' Lane	B. K. Bhattacharji	30-7-07 ...	23, S. N. Dass' Lane	B. K. Bhattacharji	30-7-07.
	28-1, Mirzapur Street	Baikanta Acharji	30-10-07	28-1, Mirzapur Street	Baikanta Acharji	30-10-07.
	5, Ram Dhan Mitter's Lane.	B. B. Roy ...	28-1-08...	5, Ramdhan Mitter's Lane.	B. B. Roy ...	28-1-08.
<i>Bande Mataram</i> (daily).	Ditto ...	P. N. Mitter ...	4-3-08 ...	75, Cornwallis Street	P. N. Mitter ...	4-3-08.
	68, Manicktola ...	B. N. Banerji ...	21-5-08...	3, Ram Mohan Shah's Lane.	B. N. Banerji ...	21-5-08.
	55, Corporation Street.	K. M. Singh ...	6-8-06 ...	55, Corporation Street.	K. M. Singh ...	6-8-06.
	193, Cornwallis Street.	A. P. Mukherji ...	21-8-06...	193, Cornwallis Street.	A. P. Mukherji	21-8-06.
	2-1, Creek Row ...	Ditto	22-10-06	2-1, Creek Row ...	Ditto	22-10-06.

DECLARATION OF PAPERS—continued

Paper.	Where.	Printed by whom.	Date	Where	Published by whom.	Date
<i>Bande Matam</i> (daily)	2-1, Creek Row	P. C. Sircar	3-12-06...	2-1, Creek Row	P. C. Sircar	3-12-06
	Ditto	R. C. Banerji	3-4-07...	Ditto	R. C. Banerji	3-4-07.
	Ditto	A. K. Bose	11-4-07...	Ditto	A. K. Bose	11-4-07
	Ditto	B. P. Sen	20-9-07...	Ditto	B. P. Sen	20-9-07.
<i>Varanasi</i> (daily).	48, Grey Street	Mannohan Ghose	20-5-07...	48, Grey Street	Mannohan Ghose.	20-5-07.
	Ditto	B. L. Ray	20-2-08...	Ditto	B. L. Ray	20-2-08.

(Sd.) C. P. BEACHCROFT.



Sir Lawrence Hugh Jenkins, K.T., K.C.S.I., Chief Justice

THE APPEALS

BEFORE

The High Court of Judicature at Fort William in Bengal.

Heard by a Special Bench composed of

SIR LAWRENCE HUGH JENKINS, K.C., CHIEF JUSTICE,

and

MR. JUSTICE CARNDUFF, J.C.S.

For the Crown—Mr. Eardley Norton) Counsel.

„ Harry Stokes)

„ Withal of Messrs Orr, Dignam & Co.,
Solicitors.

For the Accused—Mr. C. R. Das, Counsel. } For the 18 ac-
„ R. C. Banerjea, „ } cused in Cr.
„ Bejoy Krishna Bose, Vakil. } appeals Nos
„ Sarat Ch. Sen, „ } 74, 455 and
„ Nagendra N. Banerjea, „ } 456 of 1909.
„ B. Chakravarty, Counsel, } For Indra
„ Dasarath Sanyal, Vakil, } Nath
„ Monmotho N. Mukerjea, „ } Nundy.
Messrs Manuel and Agarwalla, Solicitors for the
Appellants.



Mr. Justice Carduff, J.C. 8

APPEAL BEFORE THE HIGH COURT.

On the 25th May, 1909, Barindra K. Ghose and Ullaskar Dutt filed an appeal before the Criminal Bench of the High Court presided over by Justices C. P. Casperz and A. E. Ryves against their convictions and sentence. The same was admitted. On the same day Asoke Chundra Nundy and Indra Nath Nundy filed separate appeals and 15 other accused persons filed another appeal jointly. All were admitted and usual notices on the Crown were issued and from 9th August arguments commenced which occupied the time of the Court for 47 days.

FIRST DAY'S HEARING.

Mr. C. R. Das opened the case and after narrating certain facts said :—

In order to put to your Lordships how the proceedings commenced and how these proceedings were taken through different stages, I think it would be more convenient if your Lordships allowed me, first of all, to refer to some of the overt acts alleged by the prosecution evidence adduced in the lower courts. Your Lordships will find that between October and November, there were two futile attempts on Sir Andrew Fraser in French Chandannagar on the railway line. They tried to lay the mine there in one case, but they did not succeed in doing that and took away the mine. In the other case, they laid the mine there, but failed in their attempt. The next overt act was on the 6th December. That is what is referred to as the Naraingarh outrage. The case for the prosecution was that they took the mine from Calcutta and laid it on the railway line.

In that case they said that the damage was not very much. It was trifling. One of my grievances in the lower Court was that in spite of my repeated requests no particulars about these overt acts were supplied to us. I gathered them from the evidence. On the 16th of April another incident took place. Barindra Kumar Ghose and certain other persons were seen going from Calcutta to Mankunda, near Chandannagar, and the police heard an explosion on the 11th in the house of the Mayor. The police evidence is that they connect this incident with the persons whom they saw on the previous day going from Calcutta to Chandannagar. The last of these incidents is the one which took place on the 30th April at Muzafferpur. The case for the prosecution is that it was an attempt on Mr. Kingsford with the result that two ladies were

killed. There was a trial held at Muzafferpore and a person of the name of Khudiram was convicted and sentenced to death.

What I find from the evidence is that the police witnesses state that after the Naraingar outrage in December, 1907, and until February, 1908, they came to know that there was a Secret Society in Calcutta. They began to watch different persons from March, 1908. The Police began to keep watch over 32, Murari Pukur Road, that is the garden--this place is referred to as the garden. They began to watch another house, that is No. 15, Gopimohan Dutt's Lane. It was alleged that certain boxes and trunks were removed there from 38-4, Raja Navakrishna's Street, on the 20th April. On the 26th April, there was another removal of boxes and trunks. It was from 15, Gopi Mohun Dutt's Lane, to No. 134, Harrison Road. After the incident at Muzafferpur, that is, between March and the end of April, they saw different persons going to different places.

On the 1st May Inspector Purna Chandra Biswas, who was the complainant with regard to all the different offences, laid a complaint before Mr. Thornhill, the Chief Presidency Magistrate of Calcutta. But we do not know what that complaint was. That complaint has not been produced. But we have got it out of the mouth of the witnesses that it was a complaint against Arobindo Ghose and his "gang of outlaws." I am quoting the words of a witness. I am told no record of this is kept. The same witness further declares that on that very day, he applied for and obtained certain search warrants to search different houses in Calcutta including 32, Murari Pukur Road. But this place is not in Calcutta.

We are told again that there was a gathering of Inspectors of the police force both of Calcutta and mofussil in the house of Mr. Halliday. On the 2nd of May, we find that different houses were searched and the persons, found in these houses, were arrested. Early in the morning, at about 3 or 4 o'clock, these searches were made. Our case was that though there were search-warrants and one or two search-witnesses, there were no warrants for the arrest of persons. At 32, Murari Pukur Road, that is the garden, they arrested Barindra Kumar Ghose, Ullasker Dutta, Upendra Nath Banerjee, Bibhuti Bhushon Sircar, Indubhushon Roy, Paresh Chandra Moulick and Sishir Kumar Ghose. The evidence is that as soon as the accused were arrested inside the garden, they were handcuffed and kept together in one place. They found a lot of documents, and other articles--these being exhibits from No. 1 to No. 232. Your Lordships will please note that these exhibits are in Roman figures up to No. 192. The rest is numbered with Arabic numerals.

Barindra Kumar Ghose wanted to make a confession to the

police. He pointed out certain articles and one of the officers went to get an Honorary Magistrate. The result was that no Honorary Magistrate was found in Calcutta and the confession could not be recorded then and there.

Another point about these searches is that there were search-witnesses, but they were illiterate. They could not write or sign their names.

These accused persons were taken eventually to the Park Street Thana. There the documents were mixed up, and it is in that thana, that the search-list was signed by search-witnesses. Some of the documents were signed by search-witnesses. Inspector Frizoni was good enough to tell us that the witnesses took that on trust. The search-witnesses signed them innocently. The prosecution has not examined the search witnesses, except one or two unimportant witnesses amongst them. The point that I desire to make is that the searches have not been made properly, there is no proof that these were made legally, and no inference can be drawn from a particular document or article that it was found at a particular place. After the search was over the officer in charge directed the Sub-Inspector in charge of the local thana to record the charges against these persons. They told us that these persons were charged with offences of waging war, abetment of waging war, collecting arms and so forth. These charges were not cognisable offences. The Police had no power to arrest the persons. These persons after arrest were taken to the Police lock-up, kept there the whole night. On the next day they were removed to a house which is the office of the Detective Police. There a man of the name of Ramsodoy Mukherji was in charge. The accused persons were removed in the morning. The office is at 25, Royd Street. In the meantime, Mr. Birley who took up the enquiry of the case, came to hear of the searches and the arrests and took the case to his own file from the file of Mr. Clarke, the Joint-Magistrate. Mr. Birley made up his mind to try the accused. On the 3rd of May, he made an order upon the Commissioner of Police, Calcutta, to send up these persons to him for enquiry. At that time there was no sanction of the Government; no complaint lodged by any body on the basis of that sanction. In the morning of the 4th, three persons were produced before the Police Commissioner of Calcutta. In the afternoon of the 4th they were produced before Mr. Birley at Alipore. There the confessions were recorded by Mr. Birley.

I may here indicate that these confessions are inadmissible in evidence; because Mr. Birley had taken cognisance of the cases before the Government sanction was obtained, section 164 had no application. The proceedings were really a nullity.

On the 2nd May, they searched No. 48, Grey-Street. There

they arrested Aurobindo Ghose, Abinash Bhattacharjya and Sailendra Nath Bose. They were treated in the same way—hand-cuffed. Amongst the lot of exhibits, there is a letter which is known as the “Sweets Letter.” It is No. 295. It is referred to throughout the trial as the “Sweets Letter.” There is a statement in the exhibit that “it is time sweets should be distributed all over India.” In this letter, Barindra signs himself as “Barindra K. Ghose.” Our case is that it is a forgery. These documents were also taken to the Park Street Thana. Evidence is hopelessly discrepant on the point. They tried to make out that Mr. Creagan took all the documents to his house in Jorasanko. He says in his evidence that he kept all those things in the almirah in a lot and they were produced after a time before Mr. Denham at 25, Royd Street, for the purpose of examination. Mr. Denham was a District Superintendent of Police then on special duty. He is a witness in the case. There is another witness examined in this case Babu Radha Govinda Kundu. According to his evidence these documents were kept at the Park Street Thana. They were taken from there to 25, Royd Street, bundle by bundle, for examination.

Inspector Radha Govinda was present at the examination of the documents. He is most distinct on the point. 25, Royd Street, is close to the Park Street thana. As each bundle was done with, it was sent back to the Park Street Thana. Another witness is Benode Behari Gupta. He was in charge of the documents till they were handed over to Mr. Denham for being produced in Court.

The next search was made on the 2nd at 15, Gopi Mohan Dutt's Lane. Nirapado was found there. Letters and documents were also found in the house. The police tried to make out that all these documents were not taken to the thana. Although the exhibits of this house were taken from this house, they bear marks of witnesses of the garden. The explanation given by the prosecution witnesses is very unsatisfactory.

The house at 38-4, Rajah Nabakrishna's Street, was searched on the 2nd May also. They found in the house Hem Chandra Das and arrested him. On the third there was another search. Next was at 134, Harrison Road. This was also on the 2nd May. Asoka Nundi was arrested in this house. The house of Balm Dwijadas Datt, father of Ullasker Dutt was searched at Shibpore. On the 5th May they produced all the accused except Asoke.

Counsel next referred to the search of the houses of Hrishikesh Kanjilal and his father-in-law and his uncle. Samsul Alum held this search.

On the 16th Krishna Jiban was produced before Mr. Birley. He also made a statement.

The next date is the 18th. In the meantime, applications began to be made for bail to Mr. Birley. He refused all the applications. On the 18th, evidence began. The first witness examined was Inspector Frizoni. After the evidence commenced, Mr. Norton told the Court that some of the accused were not present. On the 18th Mr. Norton put in the sanction.

As soon as the sanction was put in Babu Bejoy Krishna Bose, vakil, objected on the ground that the Magistrate could not take cognisance before the sanction was put in.

Counsel here read Bejoy Babu's objection.

Carnduff, J. : What are you reading from ?

Counsel. From the vakil's notes ?

Mr. Norton. Are they admissible ?

Chief Justice. Yes.

Mr. Das : -If my learned friend's memory differs in any way I am ready to consider it.

Continuing Mr. Das said that the Magistrate directed that a written petition should be filed. This was done. It was on behalf of Norendra Bukshi and Krishna Jiban Sanyal. The Magistrate's order was "the sanction is not illegal. The Inspector has preferred a complaint and it is on the record. I am unable to understand what the learned pleader means." On the 19th the learned Magistrate seemed to have thought differently. The trial was to have begun at 11 a. m. But Mr. Birley sent for my learned friend to his Chamber. Bejoy Babu returned at 1 o'clock. Mr. Birley returned ten minutes later. But none of the other pleaders were present at the interview. Mr. Birley passed the order immediately on return.

On the 19th Inspector P. C. Biswas was made to state something to give jurisdiction to the case.

Counsel then said that between 26th May and 6th June, important developments took place. Inspector Radha Govinda Kundu went to Baidyanath on deputation. He made a search at a house known as the Seal's Lodge, about 6 miles from Baidyanath. He found certain letters, documents and other articles at the Seal's Lodge.

On the 2nd June, a complaint was made against Birendra and another and Mr. Birley withdrew the case from the file of the Joint Magistrate to his own file. On the 23rd June, one of the accused Norendra Nath Goswami became an approver. He was not examined till 6th August. He was allowed to be examined day after day and other witnesses were also examined in the meantime.

Mr. Das said that the charges were amended in February. He asked whether his client waged war, or abetted waging of war. If

they abetted, then with whom? But there was no answer to that. The charges were drawn up on the 18th October. Mr. Norton opened his case from the 20th to the 30th October.

Counsel read the objections to the addition of new charges. These objections the Sessions Judge had overruled. Whenever counsel asked him to supply further particulars about the charges, the Judge in each case said that all the particulars were in the charges.

Counsel submitted that if their Lordships read the commitment order, they would find that it was merely a narrative of the evidence. In England, overt acts had to be mentioned in the charges. His submission was that he was entitled to be informed of the overt acts which brought him under the particular sections. He further submitted that one and the same person could not be held guilty of one offence and also of the abetment of it. If a person helped a certain insurrection, he might be charged with abetting, but not at the same time, with committing the insurrection also.

Counsel further submitted that if the case under section 122 was to be gone into, he was entitled to all the particulars regarding the offence under that section. For it was altogether a distinct offence and law enjoined that the accused was entitled to all the particulars. There was no provision of law that a man who committed an offence should go and inform the Police of the offence committed by him. Counsel submitted that if the overt acts were not detailed to him, he could not know what his offences were.

Mr. Das said that the charges against the appellants were framed first. Then a petition was put in by the Crown, which made it perfectly clear that the conspiracy with which the appellants were charged was a conspiracy to wage war. Counsel submitted that the prosecution at any rate ought to be restricted to that.

The Chief Justice: I understand that the suggestion is, Mr. Norton, that originally the charge was of conspiracy to wage war and that by your petition you indicated an intention of charging the accused with conspiracy to wage war to subvert the Government of His Majesty. Now it is said that you are bringing in a charge of depriving His Majesty of his sovereignty in this part of India. It is not included in your original charge or petition. Do you take your stand on these charges?

Mr. Norton: I take my stand on these charges.

Mr. Das: I ought to have been informed beforehand. When the charges were amended by the Sessions Judge he refused to allow me to cross-examine the witnesses.

Mr. Das then said that the evidence was of three kinds, *viz.* (1) confessions, (2) documents found at the different searches, and (3) the evidence of the watch witnesses. With regard to confessions counsel submitted that they were not admissible in evidence. If their Lordships accepted these confessions, the offence under sections 121 and 121 A did not arise. With regard to the documents found at the different searches counsel submitted that the searches were illegal and secondly inasmuch as the search witnesses were not called the searches were not satisfactorily proved. While on this subject he would point out that a great many of the documents were not proved. Some of the documents were not found in possession of particular accused persons and others in which handwritings were necessary to be proved were proved by the Sessions Judge himself by a comparison of different handwritings. With regard to the search-witnesses the evidence was of such a nature that on the examination-in-chief the evidence should not have been accepted.

Mr. Das then said that he would deal with the question of law. His first point was that the court had no seisin of the case.

The Chief Justice : Sessions Court ?

Mr. Das : Both the Courts. My case is that Mr. Birley had no seisin of the case and therefore the commitment is without jurisdiction. Therefore the trial at the Sessions Court is without jurisdiction.

The Chief Justice : What would be the effect of that ? There will be a new trial of those who have been acquitted and also of those who have been convicted ?

Mr. Das : I think it does not necessarily follow. All your Lordships would do is to set them free from illegal custody. It would no doubt be open for Government to take whatever course they think expedient under the circumstances. If Government want to have a new trial they would not proceed against persons who have been found by the Sessions Judge on evidence not guilty.

Continuing Mr. Das said that the assumption of jurisdiction by Mr. Birley without any sanction and withal any complaint was illegal. The whole proceedings beginning from the time of arrest were illegal and it was one series of illegality from the beginning to the end. The arrest was illegal because they said that the arrest was made under section 54.

Carnduff, J : Arrest without warrant is illegal ?

Mr. Das : Yes.

The Chief Justice : Therefore there cannot be any Police investigation ?

Mr. Das : There cannot be any Police investigation without an order from the court. After the Magistrate had taken cognizance of the case and the accused persons were brought up before him people were arrested all over Bengal without any order from the court. If Mr. Birley was in seisin of the case why no application was made before him? The reason was that Mr. Birley might have said "where was the sanction, where was the complaint?"

Continuing Mr. Das said that there was no doubt that the Magistrate took cognizance of the case either on the 3rd, or on the 4th or on the 5th, and having taken cognizance of the case in the same way as if there had been a sanction or a complaint before him, he had assumed jurisdiction under terms of section 196 of the Criminal Procedure Code. On the 18th he examined evidence under the charge upon which the appellants were placed before their Lordships. On the 19th the Magistrate found out the mistake and in order to cure that defect he had the complainant brought up and his statements taken. Counsel submitted that did not cure the defect. The only way in which the Magistrate could cure the defect was by dropping the proceedings altogether and proceeding *de novo*. This the Magistrate did not do.

Continuing Mr. Das said that with regard to section 121A, his submission would be that the sanction put in did not cover the offence charged. As to section 122 counsel would submit that there was no complaint before Mr. Birley and therefore the Sessions Judge could not frame a charge under 122. Further Mr. Birley did not commit the case under section 122. Counsel would not trouble their Lordships as to section 123 because the appellants were acquitted on that charge.

The Court then rose for the day.

SECOND DAY'S HEARING.

Mr. C. R. Das continuing his address said that when the Court rose on Monday he was dealing with the point of jurisdiction. Before he left the point of the want of jurisdiction generally as apart from the particular charge, he desired to point out the evidence of certain witnesses with reference to what transpired before Mr. Thornhill. The first witness was Inspector Puria Chandra Biswas who said that the complaint was written by the Commissioner of Police and presented by him to Mr. Thornhill. It was against Arabinda's "gang of outlaws." He produced 7 men before Mr. Thornhill on the 5th May and they were sent to Alipore.

Therefore what appeared in the case of that evidence was that a complaint was lodged before Mr. Thornhill, that search warrants were taken out from Mr. Thornhill, that the men arrested were

produced before Mr. Thornhill and that on the 5th May this Inspector applied for an order that these persons should be transferred to Alipore. The application for transfer purported to be made under section 182, but under that section Mr. Thornhill was not competent to enquire into that offence. At any rate it gave Mr. Thornhill no power to transfer the case. No application was made to the High Court to which Mr. Thornhill was subordinate to obtain an order for transfer. Therefore when those seven men were produced before the Joint Magistrate and then before Mr. Birlev the latter had no jurisdiction to take cognizance of that case. Further although Counsel had not got the exact terms of the complaint made before Mr. Thornhill he had sufficient evidence on the record to show that Mr. Thornhill not only issued the search warrants but also the arrest warrants. These particular documents were not produced and his submission was that they were suppressed.

If their Lordships looked at the evidence of Inspector Frizoni they would find that he said : - " I had warrants to arrest persons found in the garden and to search for the things I mentioned." I don't know if the warrants were signed by Mr. Thornhill, but they were by some Magistrate. I believe they were signed by the same Magistrate.

Counsel then went on to say that he had asked the prosecution to say whether the search warrants were issued under section 96 or under the Arms Act, but had been unable to get an answer.

Chief Justice : Are the search warrants on the record ?

Mr. Das : Some of them are. If I proceed to argue under the Arms Act I am told they were issued under section 96. If I proceed to argue under section 96, I am told they were issued under the Arms Act.

Mr. Norton produced and read two search warrants, dated the 1st May, addressed by Mr. Thornhill to the Commissioner of Police in respect of No. 134, Harrison Road and No. 23, Scott's Lane.

Mr. Das : These places are entirely within the jurisdiction of Mr. Thornhill.

Mr. Norton then read the copy of the complaint.

Mr. Das : We may take it that is the complaint lodged on the 1st May. After the arrest these men were produced before Mr. Thornhill on the 5th May and in that order he says these men were brought upon charges under sections 121, 121 A and 122 I. P. Code. There was only one charge with reference to the Arms Act. Therefore, it leaves no doubt now that the arrests were made in pursuance of orders issued by the Chief Presidency Magistrate of Calcutta.

Chief Justice : What we would do is to request Mr. Thornhill to send all warrants on record in his court in connection with this Alipore case.

Counsel then referred to the evidence of Superintendent Merri-man, Inspector Madden, Superintendent Creagan and said that from those it appeared subject to the documents which would be produced afterwards, that, at that time they were not clear in their mind that they could arrest without warrant under section 51. He then referred to exhibit 124, which was a letter addressed to the District Magistrate of Alipur by Inspector Gupta to record the confessions and on which Mr. Birley took cognizance of the case. Exhibit 126 which purported to be the first information was dated the 17th May. From those exhibits it appeared that the case for the prosecution was that they had from the day of the Narayangarh outrage been following the clue of the secret society and on the day when the arrest took place their suspicions were that the accused persons were members of a conspiracy for the purpose of overawing the Government, and if the arrest took place on that suspicion section 51 did not apply. From a perusal of those facts and having regard to the statements made by Mr. Birley himself it was evident that no fresh proceedings were started and that the proceedings went on from day to day. If their Lordships took the view that from the 19th, when the complaint was made and the statements taken, the proceedings were regular then where would be the safety of the subjects. In this connection Counsel drew the attention of their Lordships to a passage reported in 111 Q. B. 775 *Martin v. Meloni* and in conclusion submitted that the Magistrate did not exercise the powers vested in him under sections 200, 202 and 204 of the Criminal Procedure Code, and the intention of the legislature was defeated.

Counsel then said that with regard to the offence under section 121 Mr. Birley had no jurisdiction to take cognizance of the case and hence the commitment was without jurisdiction.

In support of his contention counsel cited the case reported in 24 Allahabad, 256. With regard to section 122 counsel submitted that there was no evidence that the Magistrate took cognizance of the offence under that sanction. Therefore the Sessions Judge had no jurisdiction to try the offence under that section. Counsel cited the case reported in 8 Bombay 200. With regard to section 121 A, Mr. Das' submission was that the offence which was charged against the appellants did not cover either by the order or by the complaint.

There was another point that the orders were not signed by His Honour the Lieutenant Governor. They were signed by Mr. Gault, the Chief Secretary. There was statutory authority as to the signature by secretaries with regard to their Excellencies the

Viceroy and the Governor of Bombay, but there was no statutory authority so far as the Government of Bengal was concerned. If that was so the prosecution must show that there was an authority but that was not shewn.

Mr. Das cited a case in 35 Calcutta which appertained to signature. In that case the Lieutenant-Governor of Bengal himself affixed his signature to the sanction. Mr. Das did not propose to follow the entire contention to be found in that case. He submitted that the prosecution should have proved the agency or authority in making the order.

Referring to the question of jurisdiction counsel cited a case reported in 29 Bombay 149. In that case there was a misjoinder of charges. And their Lordships held that the question of retrial was not to be decided by the Judges but by the prosecution. Counsel also cited a case reported in 29 Calcutta in which it was held that if there was no legal trial there could not be retrial.

Counsel next submitted that the accused were entitled to be tried by a jury. He contended that ever since 1726 when the Mayor's Court was established in Calcutta the English Common and Statute laws were made applicable to the presidency towns and the power delegated to the Indian legislature was limited affecting allegiance to the Crown. The right to be tried by the jury was such a matter. Therefore if there was anything in the Procedure Code which militated it was *ultra vires*. He referred to Clarke's Rules of Supreme Court in support of his contention. He next cited Morley's Digest volume I, page 11 and Herbert's Clock on the Government of India, second edition, page 32 which referred to the introduction of English law in India. He next cited Morton's Report and other Reports and some Privy Council cases and 6 Calcutta, 24 Calcutta and 5 Calcutta Weekly Notes, 659. In all those cases it was held that the whole of the English Common Law would apply in India.

Counsel next referred to several sections of the Indian Councils Act of 1861. If the provisions in the Criminal Procedure Code, taking away the right of trial by jury, affected the allegiance of the subject to the Crown then those provisions were *ultra vires*. The subjects had also some rights to demand and one of those privileges was that no man should be kept in custody without trial and the right to be tried by peers. By extending the English law in India no distinction was made between Indians and Europeans as regards the application of those laws. Surely the right was not gone because in successive criminal cases that right was demanded. The question was of vast importance, it was a question of constitutional right. From the decision in Amir Khan's case it was evident that the then Chief Justice admitted the existence of that right.

Mr. Justice Carnduff observed that the same point was raised in a case tried by the Special Tribunal and the objection taken by counsel was over-ruled.

Mr. Das submitted that in the judgment of that case no reason was given for over-ruling that objection and with the permission of their Lordships and specially of Mr. Justice Carnduff who was a party in that trial, he would proceed with his argument on that point.

The counsel proceeded to read extracts from the Judgment in Amir Khan's case in which it was said by their Lordships that it would be a startling thing to find constitutional rights of the people taken away by a subordinate legislature. Whatever could be said of Regulation III of 1818, the same thing could not be applied to the Criminal Procedure Code. Counsel in conclusion submitted that the people of the presidency towns were entitled to a trial by jury.

The next point taken by Mr. Das was that Barin being a European British subject was entitled to be tried by a Jury. The Sessions Judge had no power to try a British subject on charges punishable with death or transportation. If he did try such a case he could not pass a higher sentence than one year's rigorous imprisonment. And no waiver of this right by the accused entitled a Sessions Judge to try him.

Chief Justice. — Was Mr. Benchcroft a Sessions Judge or an Additional Sessions Judge ?

Mr. Das. — Additional Sessions Judge.

Counsel after reading the sections from the Procedure Code on this point observed that in this case there was no question that Barin was a European British subject and the Magistrate knew of it. It had been said that if the accused waived his right he would not be regarded as an European British subject. Counsel said that the question of claim and adjudication of claim only arose where the point was debatable. Where there was no question of his being a British subject, section 454 was not applicable. Section 447 clearly applied in this case and the Sessions Judge was not competent to try him.

In support of his contention, counsel cited a case reported in Taylor and Bell, 219. In this case a European British subject was tried without a jury and imprisoned and a right of *Habeas corpus* was demanded on the ground that it was an unlawful detention as the court which tried him was no court at all. In that case no *Habeas corpus* was issued because the Judge did not know that the accused was a European British subject. He next cited a case reported in 6 Calcutta, page 83.

At this stage, court rose for the day

THIRD DAY'S PROCEEDINGS.

Mr. Das continuing his address said there were two questions :— First, what the construction of that section was and, second, whether in the light of the cases he had cited, it was no longer open to their Lordships to construe that section. As regards the question of construction of the definition of a European British subject there was no reservation of any kind. Section 447 laid down in clear terms that where the accused was, but not claimed to be, a European British subject, the commitment should be to the High Court. He desired also to bring to their lordships' notice section 455 which seemed to him meaningless if the construction he was inviting their lordships to accept was not the right construction. That section contemplated the possibility of the trial of a person as a European British subject without any claim being put forward by him as such. If the construction which the cases he had cited put upon section 454 was true, there could not be any such possibility. He would not trouble their Lordships further upon the question of construction.

Then as regards the case in 6 Calcutta he submitted, first, that whether it was exactly the arbiter or not it was not absolutely necessary for the decision of that point and, second assuming it was a decision on the construction of all these sections taken together, the point he was now arguing before their Lordships was not raised in that case. The construction he was now inviting their Lordships to put upon that section was not a construction which was pressed upon the Court in the course of the argument in that case. The argument was that a person might waive his right to the status of a European British subject as far as a particular procedure was concerned, retaining in him the right so far as the question of jurisdiction was concerned.

After reading an extract from the judgment in the case reported in 6 Calcutta Mr. Das said the point he was now arguing before their Lordship had never been decided. Although he fully conceded that the view which the learned Judges took in that case was that all these sections should be taken together, yet the point as to whether a particular accused person was a European British subject was to be decided on a claim so far as the operation of the section was concerned, it had not been met nor had it been considered. There was a difference in the words in the two sections. One section dealt with the case of an accused who was a European British subject and the other with the case of an accused who claimed to be a European British subject.

The other two cases were those reported in 16 Madras, page 208 and 12 Bombay page 562. In both these cases the view of the learned Judges in the Calcutta case was accepted *in toto*.

Chief Justice : Mr. Das, you will have to bear this in mind. All these cases were decided before the present Criminal Procedure Code came into operation and with these decisions in existence the Legislature deleted the words which gave rise to these cases.

Mr. Das : If upon that your Lordships hold that the construction is not as I submit, there is an end of the matter.

Chief Justice : If we look at the question broadly what we find is—that apart from this particular chapter 33—we have no jurisdiction. The question then arises whether the exception must be taken to be established in this particular case.

Mr. Das : That exception is also worded in general terms, the words being “authorised by law.” We have to find out what is the meaning of “authorised by law.”

Chief Justice : We are in possession of the whole argument and will consider it.

Mr. Das said the next question was whether there had been a waiver such as was required in the case reported in 6 Calcutta. The waiver which the Judge insisted upon there was a waiver of all the rights in that chapter.

Counsel referred their Lordships to the order sheet of the 13th August last where Mr. Birley said he asked Barindra Kumar Ghose whether he claimed the birth certificate produced as his, that Barindra said he did, that he (Mr. Birley) had no reason to doubt that Barindra was born at Croydon and was therefore a European British subject, that he thought it right to ask Barindra whether he claimed to be tried as a European British subject and that he would accept Barindra's answer on the 15th August so as to give Barindra an opportunity to consult his legal advisers. On the 19th August Mr. Birley told Barindra he would be committed for abetment of murder and that if he claimed to be tried as a European British subject he would be tried by the High Court but if he waived that right he would be tried by the Sessions Court. Barindra said he did not want to claim his rights. So far as this particular charge was concerned, continued Mr. Das, it was not put to Barindra what his rights were and what difference it would make him if he either claimed or waived his right, to be tried as a European British subject. The point was of importance because in a charge of abetment of murder the trial was by jury. Therefore Barindra might very well have considered that he would prefer to be tried by a jury instead of by a mixed jury of the description mentioned in section 451. But where the charges were those not triable by a jury under the ordinary law it made a great deal of difference, because under those circumstances Barindra might very well have chosen to say, “I prefer to be tried by a mixed jury.” Further, Barindra was not represented on

the first day. Barindra was represented by a mukhtear, but after that he was undefended.

Continuing Mr. Das said the question was whether under those circumstances there was a waiver or not. If their Lordships accepted the cases he had cited and held there was a waiver, he had nothing more to say.

The next question was whether if Barin could waive for himself he could waive for others, who were being jointly tried with Barin. The joint trial in this case was practically under the orders of the High Court and the question was whether the right to be tried by Jury was such that Barin himself could waive. In this connection it would be remembered that at the Sessions Court some charges were added and with regard to those charges would it be said that there was waiver?

Mr. Das then said that he had certain objections to the charges and he desired to deal with them now. Some of the charges were not legal charges at all, as there was an initial and fundamental defect in the charges in that they assumed possibility of a conspiracy in relation to offences under sections 121, 122 and 123 of the Indian Penal Code. There could not be any offence of conspiracy in India except with reference to particular sections—121 A and three or four other sections, with which they had nothing to do. The case for the prosecution was that the accused persons did something which firstly amounted to waging of war and secondly if they did not, that is to say, if the Court held otherwise, they at any rate amount to an attempt. Counsel submitted that they could not charge a man with a crime and an attempt to commit the crime. In support of his contention Counsel wanted to cite cases.

The Chief Justice. Mr. Norton, do the Crown charge conspiracy apart from Section 121 (A)?

Mr. Norton. No, my lord.

The Chief Justice. It relieves you Mr. Das from citing these cases.

The Chief Justice (to Mr. Norton): Therefore there is no charge of abetment in the sense of conspiracy under section 121?

Mr. Norton: Yes.

Mr. Das then submitted that the charges under section 121 (A) 122 and 123 I, P. Code were illegal.

Continuing Mr. Das said that the next point that he desired to raise was the misjoinder of charges. The charges upon which those persons were tried were under sections 121, 121 (A) 122 and 123 and counsel would submit that there was a misjoinder of charges. Those persons could not be tried under those charges.

There was misjoinder of persons rather than misjoinder of charges and the whole question was whether the different offences could be alleged to have been committed in the course of the same transaction. The law on the subject was laid down in sections 233 to 239 of the Criminal Procedure Code. The general proposition was set down in section 233 and the other sections were exceptions to the general propositions.

Mr. Das continuing said that there was no such association from the beginning to the end, which justified a joint trial. Counsel cited a case from Taylor in support of his point. He held that association was absolutely necessary to justify a joint trial.

Mr. Das cited I. L. R. 29 Bombay 499, I. L. R. 30 Bombay page 49. He cited also page 54. Counsel submitted that continuity of intention was impossible in the case.

Counsel next cited I. L. R. 16 Calcutta. Mr. Das submitted that since some persons have been found guilty of waging war while others have been found not guilty of that charge, so there had been a misjoinder of charges with regard to section 123. The persons who joined later on could not be tried jointly under section 121A.

Mr. Das submitted that he had only one other point on the question of law and it was as regards the complaint. The definition of the word required that an allegation, written or oral, should be made before a Magistrate, who was a Court.

Continuing counsel submitted that the offence of waging war being complete in December, 1907, it could not be said that the same offence was being carried on in April, 1909.

Mr. Das then entered upon the question of misjoinder of persons and also misjoinder of charges. The charges under section 123, he held, could not be joined with the charges under sections 121 or 121A, or any one of the other charges under the various sections. In the lower court, it was pointed out that the accused persons joined the conspiracy at different times, so the learned Sessions Judge held that those who joined the conspiracy after December 1907, were not guilty of any offence under section 121. The accused could only be joined as co-conspirators on the ground that the very fact of their joining the conspiracy was a sort of implied agreement between them and the other members of the conspiracy.

Mr. Das asked whether it would be possible to decide the preliminary point about the inclusion of section 121 in the charges.

The Chief Justice asked Mr. Chuckerbutty to say his say on this point.

Mr. Chuckerbutty observed that his position was not quite so favourable as that of his friend Mr. Das. After the case against

the second batch was gone into an authority was produced. His client was not sentenced to death.

The Chief Justice remarked that it would be better to deal with the first batch now and asked Mr. Norton to argue on this point.

Mr. Norton suggested that would be very difficult and there would be terrible disorder if they were not treated together.

The Chief Justice decided to hear of that point as regards the first batch.

Mr. Norton submitted that there was authority under section 121A and section 121A contemplated section 121. Hence there was sanction under section 121.

Chief Justice: When sanction was given of attempt at murder it is not a sanction of murder.

Mr. Norton said that as regards the first batch Mr. Birley had authority from Government to prosecute under 121A and he was also authorised to take cognizance under any other section of the code which would be disclosed in evidence.

Chief Justice. No, he was justified under complaint. The Government had only in mind the complaint.

Mr. Norton. Government knew well when authorising Biswas that prosecution under section 121 was open.

Chief Justice. The whole document has relation to the complaint.

Mr. Norton. I think the Government had in mind the Magistrate and not Biswas.

Chief Justice. But the words are complaint under certain sections which are mentioned.

Mr. Norton. And to prosecute under other sections hereinafter found. The Government had in mind the complaint and "to prosecute." They left the discretion to the Magistrate to insert any other section which may be found applicable. It seems to me the words "may be found applicable" does not mean a complaint.

Chief Justice. We take it you mean by 'found,' found by the Magistrate as result of his enquiry.

Mr. Norton: Yes.

Mr. Norton then enumerated all the sections which required a sanction from the Government and said that the only section the Government had in view was section 121 and it left the discretion to the Magistrate to frame a charge under section 121.

Chief Justice: Is Purna authorised to lodge a complaint under section 121?

Mr. Norton: If in the course of trial Purna said that a charge under section 121 was sustainable.

Chief Justice : You are now shifting your ground. You said the Government left the discretion to the Magistrate to frame charge under section 121 and now you say it was also an authority on Biswas.

Mr. Norton : On the complaint of Biswas.

Chief Justice : But in his examination Biswas says he has no authority to complain under section 121.

Mr. Norton : It seems to me that he has in view section 121 when he complains.

Mr. Norton then read section 230 and said if a charge was added the court should not proceed with the trial until the sanction was produced. Here the trial did not proceed until the second sanction was produced.

Chief Justice : Do you notice what your sanction is ? Did Biswas prefer a complaint before the Judge as said in the sanction ?

Mr. Norton : He did not in the terms of the sanction. There is a section which forbids Sessions Judges to entertain a complaint.

Chief Justice : If Biswas is considered as the interpreter of Government then Biswas thought he had no sanction to proceed under section 121.

Mr. Norton : He thought it was left to him whether or not he should complain.

Mr. Norton submitted that under section 532 Mr. Beachcroft had jurisdiction to accept Mr. Birley's commitment.

He then read a case reported in 26 Bombay. The court here rose for the day

FOURTH DAY'S PROCEEDINGS.

Mr. Norton who argued on the question raised as to the Government authority to charge under section 121 I. P. Code said that the Government authority did not specifically give sanction to prosecute under section 121, but that authority was intended to invest Inspector Purno Chunder Biswas with the power of adding charge under section 121 only. As to the commitment by Mr. Birley the question was did he commit legally or without authority. Counsel suggested Mr. Birley was entitled to add the charge under section 121 just as much as Inspector Biswas was entitled to add it to his complaint. If Mr. Birley was in law so entitled to do that, then the commitment, so far as section 121 was concerned, stood good.

If the commitment under section 121 stood good, then Mr. Beachcroft, the Sessions Judge, was entitled to go on without

the addition of any section at all. Assuming, however, that Mr. Birley had no authority to act as he did, that brought them to section 532 of the Criminal Procedure Code. Mr. Norton had gone very carefully through the petitions and he could not find any petition to show that the question of jurisdiction was raised before Mr. Birley during the enquiry before him. The only shadow of justification as to the question of jurisdiction having been raised was that the petition was very vague and merely alleged that the Magistrate had taken cognisance of this case before sanction was given. As a matter of fact the question of jurisdiction was not raised in the Magistrate's Court. Hence under section 352 of the Cr. P. Code the Sessions Judge had power to alter or add any charge at any time before judgment was pronounced. The section which dealt with that was section 227 of Act V of 1898. Even under the old section 227 of the Act of 1882 it was held that the word "alter" included the word "add." Before a charge could be altered or added the provisions of section 230 had to be complied with. Section 230 contemplated precisely the condition of affairs which existed when this case came up before Mr. Beachcroft. As a matter of fact, the Crown produced the sanction before the case went on. Section 230 expressly met a case in which no previous sanction had been issued. He submitted that sanction had been given for the charge under section 121A. All the evidence as to the arms etc., had been tendered and was relevant.

Chief Justice. I understand your argument to be that when the Government gave its sanction on the 17th May for a prosecution under section 121A and other sections, it had before it all the facts on which a prosecution under section 121A was sanctioned?

Mr. Norton: That is so.

Chief Justice. Are you instructed by the Government to tell us that the Government intended a prosecution under section 121?

Mr. Norton: I have no instructions. Oddly enough I have never had any such instructions.

Mr. Das said that section 230 or 227 or 532 had no application at all. The first question was—was there an authority to prefer a complaint under sec. 121. The second question was—had such a complaint been lodged. The next question was—assuming no such complaint had been lodged or no such authority given whether having regard to the commitment under Section 121, the Sessions Judge accepted it under Section 533. The last question was—if the Sessions Judge did not accept it under Section 532, did he add the charge under Section 230? Mr. Das submitted that none of these arguments did apply here, because there was no authority and no complaint. Counsel further submitted that Sections 532 and 230 did not apply here. He cited 25 Punjab Record No 16 page 33.

The Chief Justice: We think under the circumstances it is better for us not at this stage to decide upon those points having regard to all that is involved in this case. We have had the advantage of hearing the arguments of both sides and we shall be able to dispose of the points at the right time. I think you (Mr. Das) better proceed with your argument.

Mr. Das asked their Lordships to decide the points, before the final decision of the case, because in the event of their Lordships' deciding one way or other, Mr. Das would probably withdraw some of the objections he had raised.

The Chief Justice: I have no doubt that as the case goes on Mr. Norton will have an opportunity to consider what his position is. Among other things, Mr. Norton is going to ascertain not what Government intended but what their instructions are as to intention.

Mr. Norton: I will ask them what they intended.

The Chief Justice: No, ascertain what their instructions are to you. We could not take what they intended.

Mr. Norton: It is the something in another form.

The Chief Justice: Oh, no.

The only thing we wanted to know is what are your instructions from Government as to how far you should argue their intention at that date, the 17th May. My reason for asking that is that you said you had not received instructions from the Government, and I thought it a matter of such considerable moment to the Government that they are entitled to direct you one way or the other.

Mr. Norton preferred to have their Lordships' direction in writing: What he proposed to put to the Government was this:—I am desirous to obtain information regarding Government instructions as to how far we should argue that the authority of the 17th May was intended to cover the charge under sec. 121.

The Chief Justice: Yes, that will do.

Mr. Das then said that he would deal with the evidence first. First he would deal with the evidence generally then he would take up the evidence regarding each one of the appellants. He had already indicated that the evidence in this case resolved into three classes, viz. (1) the confession, (2) the shadowing witnesses, (3) documents including the searches.

Dealing with confessions counsel submitted that five confessions were recorded on the 4th May, two on the 11th and one on the 16th. These confessions were put in by the prosecution as confessions under section 164. That section was in the chapter of Police investigation and on the 4th May Mr. Birley having taken cognisance of the case that chapter did no longer apply.

Mr. Das cited a case showing that when the accused were produced, that fact made out the cognizance of the case. He cited another case in 25, Calcutta, *i.e.*, the case of *Empress vs. Ananto Ram*. Counsel submitted that the cases cited proved that whenever accused were produced, that fact amounted to taking cognizance of the case. The facts of the cases cited, counsel urged, applied exactly to the facts of the present case. He cited a case from 5 Allahabad, page 253. In this case the confessions were tendered before the Sessions Judge, as evidence, who refused to accept the tender. Mr. Das cited a case from 3 Calcutta Weekly Notes, *i.e.*, the case of *Lal Sekh*, who murdered his master Kunjo and was tried by the Sessions Judge of Burdwan. In the cases cited, there was some complication. But in the present case, there was no such complication at all. There was a distinct declaration and over and above that, an order from the Magistrate to try the case.

The Chief Justice asking Mr. Norton as to what the Crown had to say with regard to the statement, Mr. Norton submitted that there was nothing in the Criminal Procedure Code to prevent the accused from making their statement any time they chose. Mr. Norton further said that the Criminal Procedure Code could not overrule the Evidence Act. Apart from section 164 the confessions were admissible on facts and that they had been proved.

C. J. : Mr. Das it is for you to show that they could not be proved and had not been proved.

Mr. Das : I was then not present in Court, but my friend Mr. Chakravarty was there.

Mr. Chakravarti at this point said:- I put questions to Mr. Birley suggesting that he had no jurisdiction as he had taken cognizance of the case beforehand. This point was raised in every form before the Sessions Judge.

Mr. Das next submitted that the Magistrate did wrong to put questions to the confessing prisoners. For it was not the intention of the legislature which would show the Magistrate's acquaintance with the facts of the case at the outset. the Magistrate should put questions so that the conditions imposed by the legislature were satisfied and after that the duty of the Magistrate was to ask the prisoner to go on with his confession or statement.

Counsel submitted that when Barindra said he, Bibhuti and Ullaskar had gone to Chaularnagore for the purpose of the outrage, the Magistrate asked "What authority have you got to say that?" Mr. Das observed that this was wrong on the part of the Magistrate. The Magistrate could say only : "Go on, say what you have got to say further."

Counsel emphasised the point that the confessions of the accused other than Barin had been induced by Barin. Whether the con-

fessions were admissible or not, was a matter for their Lordships' consideration. In his opinion, it was the duty of the Magistrate who recorded the confessions to note specifically that the confessions had been induced by Barindra.

Continuing counsel observed that the object of collecting and training the band of young men was to touch them spiritually to face danger and the object of collecting arms was with the object of providing against a far-off revolution. The training and collection had nothing to do with the overt acts.

Before the proceedings had closed for the day, Mr. Norton submitted to the Court that he was informed by the Legal Remembrancer that it was not the intention of the Government to include section 121 in the charge so far as the first batch in the sanction granted on the 17th May was concerned.

Mr. Das : There is then no longer any charge under section 121 as regards the 1st batch.

C. J. : No. Mr. Norton will consider the matter and will inform you to-morrow.

The Court then rose for the day.

FIFTH DAY'S PROCEEDINGS.

Mr. Das, continuing his address, said that when the court rose on Thursday he was dealing with the confession of Barindra Kumar Ghose. There was one point of view from which he desired their Lordships should consider this question of the admissibility of the confession. Apart altogether from the question as to whether it could be admissible under any other section of the Evidence Act his submission was that their Lordships would remember that at the time when these confessions were recorded the Magistrate was in seisin of the case and that he began the enquiry as it were by taking these statements from the accused persons. He submitted—and it was a question of grave importance—that if the legislature intended to bring in this kind of confession under any other section of the Evidence Act then that proposed to give the go-by to the other salutary provisions which the legislature had enacted, namely, that one could not begin an enquiry by taking the statements of accused persons. Here was a case in which the Magistrate was—by whatever means did not matter—in possession of the facts so far as the case for the prosecution was concerned, and he opened the enquiry by taking statements from the accused persons and—as Counsel would show—a good portion of that was by means of cross-examinations. That was precisely what the Legislature said could not be done. Section 193 of the old Act of 1872 which enabled a Magistrate to take the statements of accused persons was very wide. Because that section was abused, very

frequently it was altered in the Code of 1882 and the altered section was introduced into the Code of 1898. In case after case the High Court not only here but in different provinces condemned that procedure, and in view of that the Legislature altered the section to the present section 342 of the Code.

Chief Justice :—You cannot go the length of saying that after an enquiry has commenced it is impossible for an accused to confess ?

Mr. Das :—That is my submission.

The effect of Barindra's confession comes to this that up to 1904 he was engaged as a political missionary as he says. At the time of the Swadeshi movement he thought of starting a regular institution to teach boys.

Carnduff, J : That would be in 1905.

Mr. Das : Yes. Then he started the "Yugantar" newspaper in 1906. He does not give the date in his confession. He carried on the "Yugantar" for a year and a half. That brings us to about the middle of 1907. That is the first date of the charge, from May, 1907, to May 1908. Then he begins to collect boys. In connection with that he goes on to say he was always thinking of a far-off revolution and that he was collecting arms in small quantities. But he does not refer to explosives, he says he had collected 11 revolvers and 4 rifles and one gun. Then later on he refers to explosives and the use of explosives and to certain overt acts which are not in furtherance of the cause of independence. Another point in connection with that is that he induced others to make confessions who would rather not have made them and taken the consequences. Therefore if this confession stands by itself, apart from any other evidence, it can hardly be argued that the overt acts were in pursuance of the cause of independence. He says so in clear terms at the end of the confession.

Carnduff, J :—He says "we never believe that political murders will bring independence."

Mr. Das :—Yes. If I succeed in satisfying your Lordships that the conspiracy which the prosecution charged is a conspiracy to procure the independence of the country by waging war then the overt acts go out of the conspiracy in the sense that they are not indicative of the object of the conspiracy charged.

Chief Justice :—You do not suggest they are not relevant evidence.

Mr. Das :—On the charge I submit they are no longer relevant.

Chief Justice.—Surely they would be relevant in this way as showing the purpose to which these particular persons knew these explosives would be applied.

Mr. Das :—Relevant in that sense only to negative the particular object which I say is necessary as regards the charge of conspiracy made by the prosecution.

Chief Justice :—A person in possession of explosives may say “I have them in the ordinary course of trade.” The use to which explosives have been put, assuming their possession to be established, would certainly be relevant as showing they were not collected for trade but for a purpose which was not legitimate.

Mr. Das :—In that way it may be ; I submit, they are not relevant for the purpose of proving directly the particular charge of conspiracy.

Chief Justice.—Are you not now considering what is relevant and what is conclusive? Could the Sessions Judge have said “I rule out that evidence.” Mr. Norton would at once have got up and said “if you take it I need not prove that they were not collected for a legitimate purpose, well and good, otherwise I am bound to call this evidence as showing that these explosives were not actually used for a legitimate purpose.”

Mr. Das :—The question as to whether the use was legitimate or not would depend upon the particular charge the court was investigating.

Chief Justice :—If the prosecution were entitled to assume that the collection of these explosives was not for a legitimate purpose then it would be necessary to admit that evidence.

Mr. Das :—The whole question I am arguing is this, that so far as these overt acts are concerned are they indicative of the conspiracy which is charged?

Chief Justice :—The difficulty is in using the word “indicative” which depends upon the sense in which it is used. Everything which goes to establish the case for the prosecution is in one sense indicative.

Mr. Das.—According to Barindra’s confession these were not the acts which were done by them in pursuance of that object.

Chief Justice :—You cannot read the expression “far-off revolution” without reading the words which immediately follow “and wished to be ready.”

Mr. Das :—There is a marked distinction between the expression “far-off revolution” which he was thinking of or according to me dreaming of, and the overt acts which were perpetrated. That is all I have to submit generally with regard to Barindra’s confession.

Counsel then went on to say he would like to hear the argument for the prosecution fully on the point as to the admissibility of the confessions.

Mr. Norton remarked he would first like to hear what Mr. Das had to say on that point. He would not support its admissibility under section 342. His case was that this was not an enquiry. The enquiry had not begun.

Chief Justice :—I take it your argument, broadly speaking, will be that it comes under section 164 ?

Mr. Norton :—That is my general principle. I rely on section 165 of the Evidence Act.

Mr. Das :—I do not see how that section applies for the purpose of reception of a confession as evidence in this case. It is altogether a far-fetched interpretation of this section. Besides the word "Judge" has been defined in section 19 of the Penal Code. According to clause (d) of that section Mr. Birley was not a Judge and so he could not record a confession under section 165 of the Evidence Act. Even if Mr. Birley did record the confession no conviction could be based on it.

The Chief Justice :—That is in another Act. Apparently in a case reported in 8 Allahabad it was decided that a Magistrate comes within this section.

Mr. Das :—It may include a Magistrate, but apart from the question whether Mr. Birley was a Judge or not no conviction could be based under section 165.

The Chief Justice :—Section 3 of Evidence Act defines "Court." Does it not support your argument ?

Mr. Das :—It draws a distinction between a "Judge" and a "Magistrate." According to that it could be argued that "a Judge" is not a "Magistrate". I am much obliged to your Lordship. So far as the confessions of the accused persons are concerned there were provisions for it in the Criminal Procedure Code and the provisions of the Criminal Procedure Code are generally controlling the sections of the Evidence Act.

Mr. Das then went on to deal with the confession of Ullaskar Dutt and said whatever might be said of the other confessions there was no doubt that the whole of this confession, from the beginning to the end was cross-examination. If the Evidence Act allowed this confession to be admitted there would be no difference between the administration of justice, as sanctioned by the courts in England, and the administration of justice in France, because the confession begins with cross-examination. The confession was not what Ullaskar wanted to say but what Mr. Birley wanted to know. Mr. Birley had full possession of facts and he wanted to get out facts by cross-examination. If those kind of things were allowed it would be a most dangerous weapon in the hands of the Magistrates. Having regard to the manner in which the whole confession was elicited Counsel submitted that it ought not have been allowed.

Counsel then read the confessions of Indu Bhusan Roy, Upendra Nath Banerji, Sudhir Kumar Sircar, and Risikesh Kanjilal and said that objectionable questions were put and answers were elicited by improper means and therefore those confessions had no value.

Mr. Das went on reading the confessions. He read the confession of accused Krishnajibhan Sanyal.

Mr. Das next read the confession made by Bibhuti Bhusan Sircar.

Continuing Mr. Das submitted that taken as a whole the confessions did not substantiate the charge of conspiracy. With regard to the overt acts they stood dissociated from the conspiracy. All that the prosecution got from these confessions was that there was an institution at Manicktola where religious instructions were given and also lessons in politics were given and that bombs and explosives were prepared and used in a way which they believed would not further the cause of independence.

Mr. Das next proceeded to deal with the evidence afforded by the watch witnesses or rather the shadowing witnesses as they were referred to. There were ten witnesses, namely, Inspector Purno Chunder Biswas, Inspector Sashi Bhushan Dey, Sub-Inspector Satish Cander Banerjee, Sub-Inspector Chandi Churn Mukerjee, Sub-Inspector Suresh Chunder Ghose, Inspector Noren Mullick, Siba Kali Das, a spy, Head Constable Balai Ganguli, Sarat Das, a spy, head constable Sarat Palit. They did not produce the documents which they had submitted from day to day. It was important to examine them one after another and not in a manner which gave them an opportunity of studying what the previous witnesses had said. His third objection was they professed to give dates and places and said they saw particular accused at particular places from memory which was certainly objectionable. The whole of the evidence if tested according to what Purno Biswas had said would appear not to be true.

Mr. Das then began reading the evidence of shadowing witnesses. He first read the long evidence given by Inspector Purno Chunder Biswas and commented on the marvellous memory of the witness who gave those details without refreshing his memory from the diaries or any other documents which were not produced in court.

The court at this stage rose for the day.

SIXTH DAY'S PROCEEDINGS.

On their Lordships taking their seats, Mr. Norton said : Since your Lordships asked me that question in regard to section 121 I have had a consultation with the Government and my

instructions are to leave the matter to your Lordships. They desire me not to withdraw the charge under section 121 for two reasons among others. First, it involves a charge against Indra Nath Nundy who is one of the second batch and against whom no such defects can be argued as those regarding the charge against the first batch. Second, the Government are anxious that there should be a decision on the various questions of law which they consider extremely important, both for present and future guidance.

The Chief Justice : I suppose they don't instruct you to argue.

Mr. Norton (interrupting) : It was not their intention on the 17th May to include section 121 in the sanction because they had not all the materials before them to enable them to come to a definite pronouncement with regard to section 121. It was only by the time that the case got into Mr. Beachcroft's hands that they were fully appraised on that point.

The Chief Justice : I take it this way, that the Government do not desire you to withdraw the charge under section 121, but that it was not their intention to sanction a complaint under section 121 on the 17th May.

Mr. Norton : Yes.

Mr. Das, who then continued his address, discussed the evidence of the watch-witnesses. He quoted some passages from their evidence and proposed to prove that all that evidence was false.

Counsel suggested that as the accused persons in the Alipore Sessions used to come into court and to be conducted to the dock the police witnesses who sat by the platform on which the Judge sat, had the opportunity of seeing the persons as they were brought into the court-room.

Counsel then discussed the evidence of Chandi Charan Mukherji. Counsel said that witness gave a number of details about Shishir who was at the time away at Bombay.

C. J. : At that period ?

Counsel : From long before the 20th April. I think from 11th to 30th April.

Mr. Das then discussed the evidence of Suresh Chandra Ghose.

Mr. Das dealt with a letter written to Abinash Chandra Bhattacharjya by Birendra Chandra Sen, dated the 10th *Baishak*, i. e., the 24th April, 1908. The next document which counsel dealt with was a letter from Kalipado to Birendra Nath Sen.

The letter was dated the 19th April, 1908. The letter was addressed at Baniachang, Sylhet. It enquired about the progress of a National School project, and that a book named *Ashapradip*, i. e., candle of hope, would be sent. This letter and another

letter filed showed clearly that Birendra Chandra Sen was away from home and he was arrested at Sylhet on the 15th of May.

Counsel then went on to deal with Shishir and Hemendra Ghose, who were in Bombay. Shishir received a money-order in Bombay. It was from Charuchandra Roy Chaudhuri at 44, Jahji building, Bombay, dated the 23rd of May. The post mark on it was of Bombay, dated the 25th April. The money-order was sent from Calcutta and the money was paid to Shishir on the 27th of April. There was also oral evidence on the record that Shishir was away at Bombay at that time. This evidence was given by Satyendra Nath Ghose. This man was brother of Birendra Nath Ghose who was acquitted. He is a cousin of Shishir Kumar Ghose.

Counsel observed that this witness gave his evidence, as the Sessions Judge remarked in a reckless manner. He did not say that the evidence was false. Counsel observed that the evidence of watch witnesses could not be accepted and he asked their Lordships to reject it.

Mr. Das was going to deal with the evidence of Sarat Chandra Das, spy, when the Chief Justice asked. --What is your purpose in dealing with this man's evidence ?

Mr. Das reading the evidence of Sarat Das showed that he had been involved in a forgery case.

Counsel then went on to say that the first letter was dated the 11th April and was from Shishir Kumar Ghose to Deshpanday. The next document was a money order dated the 23rd April, Calcutta, from Charu Chander Roy Chowdhury, which was received by Shishir Kumar Ghose in Bombay on the 25th April. There was also oral evidence on the record as to his being away in Bombay. That their Lordships would find in the evidence of Satyendra Nath Ghose.

Counsel next read the portions of the judgment which dealt with these three witnesses and said the Sessions Judge stated that one of them gave evidence in a reckless manner, while the evidence of the other two was not reliable as regards the identification. Under these circumstances having regard to the fact that these witnesses spoke from recollection and gave details from recollection and having regard also to their cross-examination, Mr. Das submitted that the statements of these witnesses ought not to be accepted.

Mr. Das next read the evidence of Norendro Nath Mullick and said the character of this witness was such that no reliance could be placed on his evidence. Counsel submitted that the whole of this witness's evidence was incredible. Narendra Nath Mullick said he made reports to Inspector Purno Chander Biswas with

regard to each of his watches but Purno Chunder Biswas did not support him.

The Chief Justice : Does he say he got the names from the informer ?

Mr. Das : I believe so. He did not say it but I believe there is evidence on the record here to show that these names were mentioned by the informer. I am sorry I have made a mistake. The names were given to the informers by Inspector Purno Chandra Biswas who did not know the persons and the informers pointed out particular persons as Biren, Soilendro and so on.

Counsel showed that the basis of the acquittal of the garden accused was the fact that their presence in the garden was not inconsistent with their innocence.

Mr. Das observed that the whole of the evidence of Narendra Nath Mullick was incredible.

At this stage, the court rose for the day.

SEVENTH DAY'S PROCEEDINGS.

Mr. Das continuing his speech said that on Saturday he was dealing with the evidence of Narendra Nath Mullick and their Lordships would remember that with reference to the cross-examination of the garden watch witnesses he mentioned three dates, namely, 17th, 24th and 25th. With regard to the first two days he stated that Sarat Chandra Palit was with him in Dooni Lal Seal's garden, but Sarat Chandra Palit did not support him. On the 25th, Narendra said, Chandi Charam was with him, but the latter did not mention anything about it. With regard to No. 4, Harrison Road counsel had pointed out to their lordships that Narendra was not supported by anything. Mr. Das then went on to deal with the evidence as regards 23 Scott's Lane. Narendra said that on the 18th he followed Abinash from 23, Scott's Lane to the garden, but on the evidence of two witnesses it was clear that on the date Abinash was not in Calcutta, but went to Giridhi. Narendra further stated that on the 18th he saw Aurobindo Ghose, but as a matter of fact on that day Aurobindo was at Mymensingh.

The Chief Justice : I understand that your argument is confined to this witness' statement as to whom he saw—Aurobindo or Abinash at 23, Scott's Lane ?

Mr. Das : Yes, my lord.

Counsel then drew the attention of their Lordships to the passage in the judgment where the Sessions Judge said that Mr. Das did not sufficiently cross-examine the witness.

The Chief Justice : I understand your point is this : The learned Judge has imputed to you that you have not carried out

your duty as counsel in the case. He has said that it is not sufficient in cross-examination to create a doubt and that you should have removed the doubt. You ask us as to whether that criticism on your conduct is right. That is the whole thing?

Mr. Das: Yes. If that is so we ought to know that and we will try to do our duty accordingly.

The Chief Justice said that those questions ought to have been put by those who called those witnesses. It was not Mr. Das' business.

Mr. Justice Carnduff thought that that portion of the Sessions Judge's judgment might mean that if Mr. Das had gone on he might have been able to throw out the doubts.

Mr. Das: I take a different view of that.

Carnduff, J: It is not for you to remove the doubt. It is obvious. I do not think that the Sessions Judge possibly meant to say that it is your duty to remove the doubt. We cannot imagine that.

Mr. Das: It is difficult to imagine that. The observation which was made to me was stronger. However, this is rather a personal matter and I do not wish to take up more of your Lordships' time.

Continuing Mr. Das said that the evidence of Norendra Nath Mullick was open to doubt and Mr. Das took it that in a criminal case their Lordships could not accept that evidence. Counsel made that observation before the Sessions Judge and the latter said "Why should I assume that the man was not telling the truth?" The learned Judge ought not to have forgotten that he was to assume the innocence of the accused persons till their offence was conclusively established and therefore it was the duty of the Sessions Judge to consider each piece of evidence with great deal of circumspection so that if there was any doubt with regard to that that ought to have been rejected.

Counsel then read the evidence of two more watch witnesses, namely Balai Ganguli and Sarat Palit. While on this subject Counsel read a portion from the judgment of the Sessions Judge where he says: "In connection with Abinash's *alibi* Girija was asked to look into a copy of the *Bengalee*. He was given it and then Mr. Das asked him to refresh his memory and fix the date. He looked at the paper and fixed the date. He, however, said later that he could fix the date wholly apart from the paper and there was no necessity to look at the paper. I look upon this as an improper attempt on the part of Mr. Das to get on the records the contents of a document which he refused to put in and prejudicing the assessors on the spurious authority of a newspaper article." Mr. Das then said that the Sessions Judge had imputed

professional impropriety to Mr. Das for not putting that paper in. Mr. Norton asked Mr. Das to put that in, but he refused as Mr. Norton insisted to have a right of reply on that.

The Chief Justice : Do you contradict that Mr. Norton ?

Mr. Norton : I do not remember. Probably it is true.

Mr. Das : How can I be guilty of any impropriety ?

The Chief Justice : We do not think that you are guilty of any impropriety.

Continuing Mr. Das said that at the end of the evidence of Sarat Chandra Palit their Lordships would find that the evidence of this witness before the committing Magistrate was tendered by the prosecution at the Sessions Court. Though the defence raised an objection the evidence was admitted. Counsel submitted the evidence had been improperly admitted because Mr. Birley refused the cross-examination. In support of his contention Counsel cited a case reported in 21 Calcutta 642.

The Chief Justice : He refused ?

Mr. Das : Yes.

Carnduff, J : He relied on a decision of this Court.

Mr. Das : He relied on an unreported case of the Bombay High Court which was placed before your Lordships in another case and your Lordships accepted it, but this case was dissented from in a later case.

Mr. Das then referred to a petition which the accused persons submitted before Mr. Birley stating their grievances, and which was rejected by him.

Continuing Mr. Das said that the whole of the evidence, as regards the watch witnesses, was an attempt afterwards to give in the shape of evidence what they come to know from the confessions and from the informer. About certain things and certain facts there were no doubt. After the Naraingarh train wrecking case apparently the police thought that the clue would be found in Calcutta. They further had it that the police got the information of the location of the secret society in the garden in March. Another thing was clear that the occurrence was by the use of mine and in connection with that they were looking out for Barin and they found him for the first time in Calcutta on the 8th April. Then on the 20th March instructions were given to shadow Hem Das. Then on the 20th April was the Mankundu incident. The police followed the accused to Mankundu knowing one man to be Barin and suspecting they were going for an unlawful purpose. But some how or other they lost sight of Barin. But the police knew at that time that Barin was living in the garden and they strongly suspected that they were going to do something in

connection with the secret society. On the 13th April the Police came to hear of the Chandernagore outrage. If the evidence was true would they have any doubt that it was Barin's party who was responsible for all that? It was unusual to suppose that with so much information the Police did not take any step.

The Chief Justice: Is it your suggestion that they had not got the knowledge?

Mr. Das: My suggestion is that on their own evidence it appears that their evidence is not true.

Continuing Mr. Das said that on the 20th April they got information that the Society would attempt on the life of Mr Kingsford but even then they did not take any step. If those were facts applications would have been made before the Presidency Magistrate for a warrant but nothing was done.

Continuing Mr. Das said on the 4th of November the defence put in a petition asking for the production of police diaries. Mr. Denham objected to the production of such diaries as containing information prejudicial to public interest. The Sessions Judge held that the accused were not entitled to see the diaries. Counsel asked if the police were privileged to withhold such documents. Counsel read sections 123, 124 and 125 of the Evidence Act which had bearing on such privilege and said there could be privilege as regards matters which had not been disclosed in Court. He asked why the defence was not entitled to inspect the diaries as regards the doings of the search and watch witnesses. Purno Chunder Biswas said that he got the dates by heart because it was an important enquiry.

Chief Justice:—It is not clear whether he got them to heart from the diaries.

Mr. Das:—It is so

Counsel then read a passage from the judgment of the Sessions Judge referring to this and said the plea of privilege was a cloak for not producing them in court. There was no question of privilege they could have easily covered the privileged portions and produced the rest of the diaries. It was unfair on the defence to make a reference to the diaries without producing them.

Counsel submitted that if they had been going from one house to another and to the garden how was it that they could not produce any other witness except the police witnesses?

EIGHTH DAY'S PROCEEDINGS.

Their Lordships having taken their seats Mr. Das said:—My lords, before I proceed to deal with the case I beg to bring to your Lordships' notice the fact that one of the appellants before

your Lordships died last night and that is Asoke Chandra Nandi. He was arrested at 134 Harrison Road and was tried in the High Court under the Arms Act for the fact that bombs were found at 134. He was subsequently acquitted of that charge and in spite of that acquittal proceedings against him under section 121 were continued before Mr. Birley. Further, in spite of the clear finding of Mr. Birley that the evidence did not establish any connection between Asoke Chandra Nandi and the garden bail was refused throughout and the learned Sessions Judge admitted him to bail after argument and eventually he convicted him solely on the statement of Narendra Nath Mullick. Thereafter we made repeated applications for bail on the ground that he was suffering from pthisis with which he was attacked while in jail. All those applications were refused. We eventually made an application to His Honour the Lieutenant-Governor and His Honour admitted him to bail. So far as this case is concerned his case goes out. If he had been alive, I am confident, I would have been able to prove to your Lordships that not only he was not guilty but he was innocent of all the charges.

Mr. Das then continuing his argument said that he dealt with the evidence of search witnesses on Monday and now he desired to draw their Lordships' attention to some of the sections of the Criminal Procedure Code with regard to the searches. Counsel took it that having regard to the search warrants which were produced before their Lordships, being issued under section 90 of the Criminal Procedure Code it implied that there must have been a complaint before the Chief Presidency Magistrate or any District Magistrate upon which those search warrants could be issued. Counsel's submission was that either the statement of Purna Chandra Biswas was a complaint or it was not. If it was a complaint as defined in section 4 of the Criminal Procedure Code there was no doubt that the search warrants were legal but if it was a complaint then all the arrests were illegal because the police could not lodge a complaint in a court of law of cognizable cases and get reserved to themselves the right of arresting under section 54. It was for the court to determine on the result of the search or other enquiry, which the court might think fit, the issue of the process or not. If on the other hand the statement of Purna Chandra Biswas was not a complaint then the search warrants were illegal. Counsel then read section 94 to 103 of the Criminal Procedure Code and in support of his contention cited 22 Bombay 949.

In this connection Mr. Das drew their Lordships' attention to the fact that the defence had not yet got the petition—the statement of Purna Chandra Biswas taken on oath by Mr. Thornhill. The Chief Presidency Magistrate was directed by the High Court to supply that.

The Chief Justice : Have you seen this—the reply of the Chief Presidency Magistrate ?

Mr. Das : Yes. From that it is not clear whether written petition was filed or not. The Chief Presidency Magistrate does not answer that question. Your Lordships asked for a written petition filed either by the complainant or by the Commissioner of Police, Purna Chandra having sworn that there was a written petition filed by the Commissioner of Police. How is it that we come to find that some of the documents are with the Commissioner of Police. They ought to be in the file of the case.

The Chief Justice : Do you ask us to do anything further ?

Mr. Das : We find from the evidence that there was a written petition put in. I want a definite settlement as to whether such a written statement was put in or not. Your Lordships sent for it and I submit that the answer ought to have covered that.

Mr. Das next went on to read the statement on oath of Purna Chandra Biswas of which Mr. Norton had given the defence a copy. This statement was made on the 1st May before Mr. Thornhill. The question was whether this was a complaint or not ? The allegation in that statement was that Aurobindo had organised a gang and that bombs and instruments or other articles in connection with the bombs might be found at different places. If their Lordships took it that the information was lodged before the Chief Presidency Magistrate with a view that he should take action upon that then it was a complaint under the Criminal Procedure Code. Upon the presentation of this complaint, if the Presidency Magistrate pleased he could issue a search warrant. But the question was whether he could issue search warrant for the correspondence or other things, which were not instrument and articles connected with the manufacture of bombs and deadly weapons so mentioned in the complaint ? If it was a complaint, he would be entitled to issue search warrants. If it was a complaint at the same time he took the cognizance of the case upon that complaint, and if that was so, the police officers would not be entitled to arrest under section 54; and before that complaint was put in, Counsel took it under Section 196, search warrant was issued and the search began to be held. Thus their Lordships would consider whether there was any attempt to comply with the provisions of section 103 of the Criminal Procedure Code. Counsel submitted that every principle innunciated there was violated. They did not have neighbours, except in one or two cases, as search witnesses. They did not have respectable search witnesses and in one case they did not even however have two search witnesses which was the minimum number in that section. Counsel also submitted that they did not even got the search list signed by the witnesses at the place where the search was held. There was one further point and that was not one of these search witnesses

(of course with the exception of one or two unimportant searches) was called in the case.

Chief Justice: Even if it be that the searches were irregular, what then?

Mr. Das: My submission is this. If your Lordships find that there was no attempt at all to comply with the statute then the whole thing is illegal. If on the other hand your lordships find that they tried to conform to the statute but some mistakes were done, then they would be irregularities.

The Chief Justice: If they were illegalities, what would be the effect?

Mr. Das: I submit they ought not to be allowed to give evidence.

The Chief Justice: Can you contend that though certain articles were in fact found, on account of the irregularity of the proceedings, the proceedings are nullified? I merely put this by way of suggestion.

Mr. Das: The police got these documents by reason of exceptional powers given to them under which they can go into any body's house and find out anything they choose. Had it not been for this they would not have been able to enter the house. Because these proceedings are out of the way the legislature says you can do it but we insist upon this being done or that being done. If your Lordships find that there was a deliberate disobedience of the injunction will your Lordships allow it?

The Chief Justice: The evidence procured *per se* must be regarded with suspicion, but if the evidence is there can you say that it is inadmissible? Your point is that it is inadmissible.

Mr. Das: Yes. The legislature lays down the conditions upon which the evidence should be given and if it is disregarded then it is the intention of the legislature that such evidence should not be given. My submission is that under the circumstances they ought to be scrutinised with great care far more than in a case where those conditions had not been specified.

Mr. Das then went on to deal with the evidence of searches and said that with regard to search list his submission was that that list was not prepared in the garden. As regards the detailed list his submission would be that it was aftercreation.

Mr. Das then read that portion of the judgment of the Sessions Judge where he deals with the exhibits and said that everything which went against the police had been explained away, that some of the important points raised by the defence had not been dealt with at all and that counsel for the defence had been attacked with dishonesty. In considering the whole matter their Lordships would find that the police began by not adhering to the provisions

of the law. Then there were many points of suspicions. Lastly they closed the evidence without calling a single search witness. Referring to the writing of the exhibits on plain papers, Counsel submitted that the case for the prosecution was that they ran short of papers. But Counsel submitted that that was not so. If the printed forms were used it would have shown their position much more clearly. They could not afford to fill in the time and therefore to obviate the difficulty they used plain papers.

Mr. Das then went on to deal with the three subsequent searches made at the garden after which he dealt with the search made at 15, Gopi Mohan Dutt's Lane on the 2nd May. There was only one search witness in connection with this search and he was a resident of 15, Dacre's Lane. This witness was not called. While on this subject counsel would draw their Lordships' attention to item No. 10. It was a book entitled "Progress of the literature in the nineteenth century." The prosecution said that inside that book was a slip of paper on which the name of Kani was written. The book itself was signed and initialled but the slip of paper was not. The attention of the committing Magistrate was not drawn to the slip of paper when the book was tendered. It was at the Sessions Court when the prosecution drew the attention of the defence to it.

Counsel there read the evidence of Mr. Madden and Mr. Finney on that point. He said that there was a second search of 15, Gopce Mohan Dutt's Lane. Four things were found at the search. Before this search they had searched Seal's lodge on the 28th May. From the 2nd May the day on which Kanai Lal Dutt and Nirapada Roy were arrested and up to the 7th June this house remained vacant. It was not locked up and after the search, one of the search witnesses took a lease of the house. The defence suggested that he was a police spy.

The Court then rose for the day

NINTH DAY'S PROCEEDINGS.

Mr. Das said the main point he made on the plans was that on the 6th different places were shown in the hall at the garden and it was not explained how certain things found on the 7th and 8th were not noticed on the 6th when the different places inside the hall were shown to the plan-maker. Counsel did make an observation with regard to the numbers, but he now found that Inspector Frizoni in his evidence said: "On the 6th I think I took some blank form of search lists. I do not think I took a copy of the search list on the 2nd. The plan-maker was there that day. I pointed out the places where several things were found. I gave him the information from memory." Hence no argument could be based on those numbers either way.

Mr. Das then said : There is one matter with regard to which I should like to make my application now before your Lordships. When I pointed out I was not allowed to cross-examine after the charges were altered and your Lordships observed that if I thought I could remedy the matter by any application to your Lordships your Lordships would hear me on that point. Since then I have considered the matter very fully. I am now impressed with the feeling that this trial has gone on for a long time here and I feel I would like to put a few questions to Mr. Birley if your Lordships would allow me.

Chief Justice.—Are the questions you wish to put to him questions which arise out of this altered charge ?

Mr. Das :—I will put my case on the question of the altered charge in this way : section 231 says “shall be.” It does not leave the discretion to the Judge. As a matter of fact I would have been entitled to cross-examine every witness after the addition. I did not desire to make that application for one moment after all that had happened in this case.

Chief Justice :—You tell us your wish to ask such questions as you would be entitled to ask under section 231. You tell us that in your responsibility as counsel giving full consideration to this matter ?

Mr. Das : Yes. My questions will be on the confessions.

The Chief Justice asked Mr. Norton what he had got to say on the subject of this application.

Mr. Norton :—I am extremely loth to interfere with the privilege or right of counsel and his client. But I submit that under section 231 the only possible right which can be claimed or exercised is the right to ask questions with regard to the added charge. There is absolutely no difference between the old charge and the added charge. The only difference is that whereas under the old charge the offences of waging war, abetment and conspiracy are mixed up in one section in the added charge they are put under three sections. The language is identically the same and it is a mere re-arrangement into three sections of what was previously comprised in one. The right claimed can only arise where there has been an alteration or addition to the charges.

In support of his contention Mr. Norton referred their Lordships to Prinsep's Criminal Procedure Code and read Sir Henry Prinsep's note to sections 231.

Mr. Norton continuing said.—Your Lordship, Mr. Justice Carnduff, has put the matter exactly. If your lordships compare the new charge with the old charge your lordships will find that there is absolutely no difference.

Chief Justice :—Supposing we come to the conclusion that there has been an alteration or addition.

Mr. Norton :—Then I consider he has a right.

Chief Justice.—I understand, Mr. Das, this alteration and addition particularly concern you so far as they refer to the charge under section 121 ?

Mr. Das : Yes, and also to the charge under section 121 A, with reference to the alternative portion of it. The Sessions Judge himself in his order says :—“Mr. Das did not know this before, but knows it now.”

Chief Justice : The alternative charge does not make much difference.

Mr. Das : It may affect one in this way. If they are not in the alternative I may rest satisfied by submitting before your Lordships that these charges cannot be framed together.

The Chief Justice : You did not conduct your case before the Court of Sessions on that hypothesis ?

Mr. Das : I can not say I did.

The Chief Justice : So that really it seems to be a matter of suggestion. It is only with regard to the charge under section 121 that this difficulty arises.

Mr. Das : I cannot say I urged it in that way.

The Chief Justice : The better plan would be this. Instead of asking Mr. Norton to break in now in your argument with a view to see whether or not there has been an alteration, we had better wait till we hear Mr. Norton's argument on that point in the ordinary course and then if we think necessary we can give the necessary direction.

Mr. Das : As your Lordships please.

There is another preliminary point before I go on with regard to the house searches at No. 15, Gopi Mohun Dutt's Lane. The point is this. With regard to the observation which fell from your Lordship Mr. Justice Carnduff about the blank space in the certified copy, I find in two other places are such spaces. One is at item 31 and the other at item 87.

Mr. Das then went on to say that when the Court rose on Tuesday he was dealing with the house search at No. 15, Gopi Mohan Dutt's Lane. That was on the 7th June at a time when the enquiry was going on at Alipore. This was done without any order from Court.

Counsel next read and commented on the evidence of the witnesses to this search, and remarked that their evidence could not be believed, one of them being undoubtedly in the service of the police.

Mr. Das next referred to the search at No. 48, Grey Street, the house in which Arobinda Ghose, Sailendra and Abinash were arrested.

After enumerating the articles found in that house Mr. Das alluded to the several points he wished to raise with reference to this search. First there was no satisfactory evidence as to when the documents found were kept before they were found. This was especially so with reference to one document—the “sweets” letter—which according to the prosecution case was not seen by any of the officials till the 11th. Second, the circumstances disclosed in cross-examination showed that some of the documents must have been signed by the search witnesses at places other than No. 48, Grey Street. The prosecution evidence was that whatever was done by the search witnesses was done at 48, Grey Street. The defence was that in the same way that the articles said to have been found in the garden were taken away to Park Street and signed by the search witnesses there, so also the things said to have been found at No. 48, Grey Street were taken away to Park Street and all that was done by the search witness was done there. The third point was that the circumstances tended to show that the search witnesses were police spies. Further, the prosecution evidence was that all these bundles of letters were made up and kept separate. The circumstances showed that these bundles could not have been made daily throughout. He would show by mathematical calculation that the case which the prosecution tried to make out had not been substantiated. The search witnesses were not even called.

Continuing Mr. Das read the evidence in connection with the search at 48, Grey Street in which there was constant reference to the “sweets” letter. He argued that the evidence made it clear that all the papers and documents seized were sent to the Park Street thana in the same way as the garden exhibits were sent to that place. This was especially the case with regard to the “sweets” letter bundle. Although the case the prosecution made all along was that nobody saw the “sweets” letter till the 11th May, Inspector Gupta when examined said he saw it in the house No. 48, Grey Street. Then this witness reflected and thought he had gone too far and he waived his first statement by saying that he first saw it at the Royd Street detective station where Mr. Denham and Mr. Creagan were sorting the documents on the 4th or 5th May.

Mr. Das then went on to say, there was at least one document said to have been found at this search which, though it bore the signature of the search witnesses, also have a number which was not the number on the search list. That was exhibit 287-1 which bore the signature of Lahiri and the number 7A. It was clear from Mr. Creagan’s evidence that the number must have been put on

afterwards. Mr. Creagan was surprised that it should bear a number which had no reference to the search.

Counsel then passed on to deal with what had been referred to in this case as the integrity of the bundles, namely, the bundle of letters seized at the search.

Continuing Mr. Das said that there was one more point about the search at 48, Grey Street and that was the case for the defence that Babu Bhupendra Nath Bose, the legal adviser of Aurobindo Ghose wanted to be present at the search but was refused admission. The legal adviser heard that the search was going so he went to the house and wanted to go in but was not allowed to enter. Mr. Creagan did not admit that to the fullest extent but he went very near to that. Counsel then read Creagan's evidence who said that he had seen Bhupen Babu and that information might have been brought to him if any one wanted to be present. All other witnesses said that Bhupen Babu was there but they did not admit that he asked for permission to be present at the search. Counsel submitted that upon that it was reasonably clear that Bhupen Babu wanted to be present but was not allowed admission. The fact that he was not admitted was not admitted.

Mr. Das continuing said that he was pointing out these different things to their Lordships but he did not know what would be the effect of them. If these sorts of things were allowed, where would be the safety of the people? The legislature said clearly that under the circumstances it would not be safe to rely on the testimony of the police and so they wanted that witnesses should be present at these searches, search lists should be drawn up, etc., so that afterwards there could not be any question as regards the search. These points were raised before the Sessions Judge. While on this subject Counsel would refer to another letter, which the defence said was a forgery for the purpose of implicating Arabinda. With regard to the credibility of those witnesses Counsel would cite one instance before their Lordships. In one of those *Jugantar* cases, Inspectors Gupta and Lahiri manufactured a news boy for the purpose of giving evidence and for the purpose of implicating Abinash.

With regard to the search at 134, Harrison Road, there was no particular point that he desired to make except this that the witnesses were not called. Three persons were arrested there. Two of them were acquitted and the last Asoka died the other day.

Counsel would next deal with the search at 30-2, Harrison Road. This place was described as belonging to Monmotho Nath Banerjea, who was not arrested at all. The search list made there was a very instructive one. Their Lordships would find that one of the letters found there arrived by post that very day. The

prosecution said that it was found on the file of letters. The post mark on the letter showed that it was delivered at 8 A. M. on the 2nd. The case for the prosecution was that the police went to the house early in the morning, found the door closed and waited till 11 A. M. when the door was opened. The search was next held and the letter was found.

The next search was at 4, Raja's Lane, The search was held on the 16th May without any order of the Court, at a time when the enquiry had already commenced. The search witnesses were not called. The case for the prosecution was that one Taranath Roy Chowdhary, who was one of the conspirators, used to live in that house and therefore all the things found in that room were evidence in this case. Counsel submitted that there was nothing on the record to show that Taranath was a conspirator and therefore the things found there could not be used in evidence against any of the accused. Those things, Mr. Das further submitted, were not found in the room of Taranath but within an open almirah in another room, which used to be occupied by another person. The man in whose room these things were found said that they belonged not to him but to Taranath.

Mr. Das : The letters found there cannot be used as evidence against anyone. If they were found in the possession of the accused persons, they might have been used on a different footing. They were found in a house, whose proprietor himself was arrested, and on the evidence of the proprietor, the question was whether those things belonged to him or to Taranath. Secondly, there is no evidence on the record to show that Taranath was a member of this conspiracy. Even if it were a fact that Taranath received a particular letter, it is not evidence against others. Taranath may have received a hundred letters from other persons, but those cannot be used as evidence against the accused persons. Amongst those letters, your Lordship will find letters which are between strangers and have nothing to do with Taranath. Those letters, I submit, would not give evidence against anybody. My submission is that the documents in this case may not be used as evidence as they were not found in the possession of the accused persons.

The Chief Justice : You say that there is no evidence at all against Taranath ?

Mr. Dass : Yes. The only evidence against him is that he was the manager of the "*Jugantar*" at one time. These letters have not been used as evidence in any other way, that is to say to prove the hand-writing or anything. These letters affect Mr. Chuckerabutti's client more than anybody else and he will deal with it more fully.

Mr. Das next dealt with the search at 55-3 Grey Street and said that, as this was not a very important search, he would not

trouble their Lordships with it, nor would he trouble their Lordships about the search at 37 College Street, which was made on the 23rd June. There was another search at 10-1 Rani Sankari's Lane on the 1st and 2nd July. In this search, the prosecution found a note-book containing formula for the preparation of bombs. Bejoy Chandra Bhattacharjee, who was arrested there, had been acquitted. Counsel did not know whether Mr. Norton was going to make use of this note-book.

Carnduff J : Has it been proved in whose hand-writing that note is ?

Mr. Das : No. On the 1st July they got the note-book. Bejoy was there then but he was not arrested. Inspector Lyon swears that he saw the formula on the first day. He was contradicted by other witnesses. The note-book contained the name of Chandra Kanto Chackerbutty, who had nothing to do with the note.

Continuing Mr. Das said that the next search was made at 52, Machuabazar Street, on the 16 July, 1908, but it was not a very important search. Then they had the mofussil searches. There was a search in the house of Satyendra Nath Bose at Midnapore, but Counsel would not deal with that. The next search was at Chatra in Serampore and that had a reference to Rishi Kesh Kanjilal. The search was made on the 10th May. In this connection, Counsel drew their Lordship's attention that not only Rishi Kesh's house was searched but that of his father-in-law's. There were four search witnesses but none of them were called. Counsel submitted that on the 10th May, the police had no power to search without an order from the Court. Further these documents, which were found there, were not proved and hence they could not be used as evidence.

Mr. Das then said that the next search was at Khulna where Sudhir Kumar Sircar was arrested. This search was also on the 10th May. Counsel submitted that this search was done without an order of the Court, and secondly, that the documents which were found there could not be said to be in Sudhir's possession because it was his father's house where he as well as his brothers used to live. The letters upon which the prosecution relied were letters which were written not by Sudhir but by one of his brothers to another brother.

Then there were three searches, namely, one at Deoghar, one at Jessore and the other at Maldah, but these were not important searches.

The search which was made at Baniachong, Sylhet, on the 15th May, was rather an important one. This was the house of the three Sen Brothers—their father's house rather. The search list was not prepared at the time when the search was made but after-

wards at the thana from the notes which were taken at the time of the search. At first the defence were told that the notes from which the search list was prepared had been destroyed but afterwards these notes were produced. In connection with the search, the Deputy Superintendent of Police, Mr. Kemp, and three other police witnesses were examined. After reading their evidence, counsel submitted that in the absence of the original notes—his contention being that the notes which were subsequently produced were not the notes which were at first made—the search list could not be relied on. The notes which were subsequently produced were nothing but simply copies of the search list almost word for word. Further, from the evidence of one of the prosecution witnesses it appeared that the original notes were destroyed.

The Court then rose for the day.

TENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address said, he had already made his submissions on the questions of law bearing on the searches. He desired only to give their Lordships a reference from the Bengal Police Code, Volume 1, 1897, rule 65, clause 4 sub-clause (m) page 433. These rules were proved under section 102 of the Criminal Procedure Code.

After reading rule 65 of the Bengal Police Code, Mr. Das said :—If any articles are found in execution of a search warrant they have to be produced before the Court which issued the search warrant and the things are to be disposed of by the order of the Court. As a matter of fact, we have got no order sheet, no order of the Court as to what is to happen to the things. What happened was that after the search, they remained in the possession of the police. My objection is not merely a technical one. The difference is this :—If the articles are produced in Court the accused persons would have the right of inspecting them. They could apply to the Court and have a list made and they could ask their legal advisers to look at them. In fact the articles are held subject to the orders of the Court. But if, on the contrary, you take a search warrant, execute it, get hold of the articles and remove them to the thanah, the accused persons, or their friends, or their legal advisers, or any body on their behalf would have no opportunity of seeing the articles or making a list of them or checking the examination of those articles by the police officers. My submission is that it introduces an element of suspicion and uncertainty into the whole of the search. In that connection I may further submit that even after the enquiry commenced, we frequently applied that the things should be kept in the possession of an officer of the Court—not a Court Inspector or Sub-Inspector—but in spite of our request,

they were allowed to be kept in possession of the police from start to finish, from the time they were produced until the conclusion of the trial before the Sessions Judge. It is the intention of the Legislature that for the safety of persons whose houses are searched they should be conducted in a particular manner.

With regard to the confessions, Mr. Das said, he had already submitted that they did not come under section 164. As regards that other branch of the argument he had considered the matter further since he had addressed their Lordships on the point. The argument against the defence was that though these might not be confessions which could be recorded under section 164 of the Criminal Procedure Code, nevertheless they were admissible under section 21 of the Evidence Act, and inasmuch as there were no other provisions which made such admissions inadmissible, they might be admitted in this case.

Counsel then went on to say, he had looked into all the cases he could get on that point and he would place before their Lordships certain cases he had got, one of them being against him. With their Lordships' permission he would first place before them the case which was against him.

Mr. Dass said that the case appeared in Unreported Cases published by Rattan Lal of the Bombay High Court. The case was that of *Queen Empress vs. Narayan*, decided in November 1893, but the names of the Judges were not known.

After reading the judgment in that case, Mr. Das remarked that the other cases in Calcutta, Madras and Allahabad were against the view expressed in that Bombay case. The other cases were those reported in 9 Madras, 2 Calcutta Weekly Notes, and 13 Allahabad. Then there were two subsequent cases reported in 8 Calcutta Weekly Notes, which, though they did not discuss the question, excluded a statement taken under such circumstances.

Continuing Mr. Das said that the other case was the case of *Satnarain Tewari* against the Emperor. Counsel cited that case before.

The Chief Justice : What volume ?

Mr. Das : 10 Calcutta Weekly Notes, 52. There their Lordships held that the particular statement being taken at the time when the Magistrate was enquiring into an offence under section 202, it was not admissible under section 164. Therefore it is not a stage under section 164 because he has already taken cognizance.

With regard to the English cases Mr. Das desired to refer their Lordships to the English Statutes which were quite different from the Indian Statutes. He then cited 11 and 12, Victoria, section 18,

chapter 42 and 6 C. W. N. 825, and said, if they looked into the Criminal Procedure Code, they would find it contained careful provisions which contemplated that every stage of the trial should be gone into with a great deal of particularity. But there being no provisions for that, the intention of the Legislature must be taken to be that only at certain stages, such confessions should be recorded. Counsel then read section 203 of Act 25 of 1861. This provision was taken away in the Code of 1872, and since that time it was excluded. That was a fair indication of what the intention of the Legislature was. Counsel submitted that there were ample reasons for excluding that part. It was clear that the Legislature could not trust the police officers. There were various enactments, which were passed from time to time for the protection of the accused persons from the police officers and their Lordships would find a clear indication of it in the judgment of Mr. Justice Mahmud in the case of *Babulal*. Further, in this country there was no separation of the Executive from the Judicial. Counsel on those grounds submitted that the confessions were inadmissible. He, however, did not wish to refer to their Lordships the case reported in 13 Calcutta 345.

Mr. Norton : While on this point I wish to draw your Lordships' attention to the Full Bench case reported in 15 Calcutta 595.

Mr. Das : In that case the confession was recorded by an Honorary Magistrate of Calcutta and the question was that the provisions of the Criminal Procedure Code did not apply to the Calcutta Police, and therefore section 164 was not applicable to them. Not only that section but all at chapter of the Code. That is a different question.

Carnduff, J : They held that chapter 14 of the Code did not apply ?

Mr. Das : Yes, my lord. That has of course nothing to do with this, because that was in Calcutta and this was in the 24-Pargannas.

Continuing Mr. Das said that he had another objection to the confession and that was this : Before a confession was admissible, the Magistrate should, by putting questions, exclude not only threat or pressure but even such inducement as would make the confession inadmissible. As for instance, the Magistrate did not put to Barin whether he was induced by any body to make the confession. Counsel contended that unless that question was included, the confession was inadmissible. In support of this contention, Counsel cited 1893, 2 Q. B. page 12. It throws upon the prosecution the burden to prove affirmatively that the confession was voluntarily made. In the present case, not only there was no record of it but the evidence of Mr. Birley proved that there was no such question put to the accused.

The case of Barin, said Mr. Das, might be looked on from two points of view. Apart from the confession what was there against him? If their Lordships proceeded on the confession, it would be unnecessary, with regard to good many points, to discuss the evidence, because the evidence would not show anything more than what he said in the confession and inasmuch as there was a question as to the admissibility of the confession Counsel would take it in both ways. Apart from the confessions there were the evidence of the *Jugantar* articles, the evidence of what was found in the garden, the fact that he was found at the garden, the overt acts and the evidence that he was found on certain occasions at No. 15, Gopi Mohon Dutt's Lane, and at 38-2 Harrison Road, by the search witnesses. From all those evidence, except the *Jugantar* articles, no offence could be brought home against him either under section 121 or section 121A, or section 122, because they were perfectly consistent with the offence under the Arms Act alone, because they were perfectly consistent with the committing of dacoity and because they were perfectly consistent with the preparation of bombs for the purpose of killing particular persons. From these they could not get the object.

Carnduff, J : You are putting aside the *Jugantar* articles?

Mr. Das : Yes. I shall contend that the articles in the *Jugantar* are inadmissible in evidence.

Continuing Mr. Das said that the particular object which was necessary under section 121A, could be gathered from the nature of the article that were found and the overt acts that were committed with the help of some of these articles. Counsel submitted that the articles disproved that object because what they got in evidence was that there was a bomb outrage at the house of the Mayor of Chandernagar, and that there was an attempt on Mr. Kingsford. Did these different acts show that they were conspiring to wage war against the King? No. These acts showed that they had particular grudge against particular persons and for particular reasons. So far as the attempt on the Mayor was concerned, that was admitted, the prosecution case being that he did not allow a public meeting to be held at Chandernagar. So far as Mr. Kingsford was concerned, the Sessions Judge had found that it was an act of revenge. Counsel submitted that the same reason would be applied to the attempt on Sir Andrew Fraser. However, for argument's sake, they would take the worst view of the case. Then how could it be shown that in attempting on the life of Sir Andrew Fraser they were waging war against the King? The essence of waging war was that there should be opposition and that it should not be restricted to particular individuals. If they attacked a particular house, or if they killed a particular man, that would not be waging war. In proving the waging of a war, the prosecution

should prove not only the generality with regard to the scope of the particular acts but there must be such a thing from which it was possible for any human being to think that by that act they would be subverting the government of the country. Was the attack on Sir Andrew Fraser an offence of that description? No. It might be a crime; it might be one of the serious crimes of the Penal Code, but there was provision for it in the Indian Penal Code. Of course, Counsel was assuming the case to be entirely true. In conclusion Counsel submitted that the acts in question were not such as would bring the case under section 121A. Then they would assume for argument's sake that a number of bombs, certain pistols and something else were found there which showed that their intention was to prepare bombs. Certain plans were also found there and the case for the prosecution was that they were intended for the purpose of committing dacoity. Was that consistent with any object other than the object mentioned in section 121A? As long as the prosecution could not satisfy their Lordships that the object could not have been anything else but those intended under section 121A, their Lordships would not find them guilty. So far as the overt acts were concerned, they were not indicative of the particular object and the same argument would apply with regard to the things found there. For these reasons section 121(A) is disproved. The prosecution was fully alive to these points and that was why they wanted to bring in the "*Jugantar*" into it. Counsel submitted that the "*Jugantar*" evidence was not admissible because a great many of them were dated before the period of the charge—in fact all of them. It was further stated that Barin was connected with it and that the articles were acts of Barin. Counsel submitted that *prosecution have* not proved them as Barin's acts. How could that be any evidence in a case of conspiracy? Whose intention did they represent? Of Barin? They could not give the previous intention of a particular person unless they proved that it was the common intention. They simply amounted to this, what Barin did or what he said at a time when it was not the case for the prosecution that there was a conspiracy, went in evidence. Under what section was that admissible? Under section 14? Counsel would submit not, because the intention must be the intention of the conspiracy. If they left out the *Jugantar* evidence then there would be nothing.

Mr. Das then said that the Sessions Judge based Barin's connection with the *Jugantar* on Ullaskar's confession which again was not admissible because it was not voluntary. The Sessions Judge had admitted the exhibits, subject to the comparison of hand-writings. As regards exhibit 1217, the Sessions Judge said it was "apparently in the handwriting of Barin." He did not say how he came to that conclusion. There was no *prima facie* proof of hand-writing.

The Chief Justice : The whole question, it seems to me, is this. By whom the comparison is to be made ?

Mr. Das : My submission is that the words "to be proved" in the section really means to be acted upon by the Judge.

The Chief Justice : I suppose you do not deny that for the purpose of proving the handwriting it is necessary to put it into the hands of an expert.

Mr. Das : That is one of the methods of proof.

Mr. Das continuing said that that was the only proof of Barin's connection with the *Yugantar*. The evidence of Lahiri showed that Barin was unconnected with the *Yugantar*.

The Court then rose for the day.

ELEVENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address said that with regard to the interpretation of section 73 of the Evidence Act, he found that the history of the section showed that what was intended to be done was that witnesses should be allowed to compare documents in court, and inasmuch as it was at one time doubted whether the court or jury could look into such a document, it was especially provided by the Act. In support of that view Counsel cited a case in 10, Moore's Appeals. That was a Privy Council case and was a decision on this point.

Their Lordships would remember the words of the English Statute which referred to witnesses. In a case reported in Foster and Finlayson's Reports that question arose and inasmuch as the word "witnesses" was there, the Court could not admit the document sought to be admitted. Counsel read Section 27 of the English Statute of 1854 and said that that section was reproduced in section 8 of the English Statute of 1864. In India, Act II of 1855 (the Evidence Act) reproduced the same section, the Indian section being section 48. That was the original of section 73 of the present code. The case reported in Foster and Finlayson was the only case upon which was based the observation in Taylor on Evidence on which Counsel for the Crown relied. Mr. Das submitted that that section enabled witnesses in the box to compare hand-writing for the purpose of giving evidence as to whether a particular document was in the handwriting or not of a particular person. When any writing was made in Court by a witness, it enabled the Court or jury to look into that. Sections 45 and 47 of the Evidence Act merely said that the opinion was relevant and did not contemplate actual comparison in Court. In addition section 47 laid down three ways in which that opinion might be formed.

Counsel next cited a case in 9 Coxe's Criminal Cases, page 448. That was a very old case. In that case such evidence was disallowed but the grounds were not stated. Counsel did not know how far that case would assist their Lordships, as no reasons were assigned for the decision.

Counsel next cited a case of *R. D. Harvey* in 11 Coxe.

Continuing Counsel said that the case may have been decided from another point of view. Before that section their Lordships had nothing under the Evidence Act under which any document inadmissible to the issue in the case might be admitted.

Mr. Das then proceeded to deal with the case of Barindra Kumar Ghose and said that in not one of the searches of the "*Yugantar*" was Barindra found by Inspector Purna Chandra Lahiri. He would not place the evidence as to the searches of the "*Yugantar*" before their Lordships because his point was that there was no such evidence in connection with the searches.

The *Yugantar*, said Mr. Das, was started in March, 1906. The first press in which the *Yugantar* was printed was the Kamala Press. The owner of that press was Bisheshar Sen. He was a witness for the prosecution. The case for the prosecution then being that he was a conspirator. The Sessions Judge, however, took a different view of the case. Bisheshar Sen said with reference to the relations between the *Yugantar* and himself that he only saw Bhupendra Nath Dutt who was subsequently convicted of sedition. According to the prosecution Barindra seemed to be the principal figure, but Bhupendra Nath Dutt did not point out Barindra.

Apart from the confession there was no evidence upon which it could be said that Barindra was connected with the *Yugantar*. When their Lordships came to the confession their Lordships would find Barindra said that he in conjunction with others, started the *Yugantar*.

The difficulty became greater when the Sessions Judge took exception to eighteen articles of the *Yugantar* only four of which were within the period covered by the charge. As regards the fourteen articles which were outside the period covered by the charge, Mr. Das submitted that they were irrelevant. With regard to the other four articles, the prosecution were put in this difficulty. If the prosecution acted on Barindra's confession then those four articles appeared at a time when Barindra had nothing to do with the *Yugantar*.

After dealing with the articles in the *Yugantar* Mr. Das said.—My submission on the whole is subject to any criticism my learned friend may make, that these articles may be seditious, and many of them are no doubt seditious. But your Lordships will

find that the main idea which runs through them is that a need for independence must be created. All the different disquisitions on revolution, etc., are for the purpose of creating these means and all the means they advocate are for that purpose. No doubt the object is the ultimate political independence of the country, but they confine themselves to this, the propagation of the ideal of freedom and the means to bring about that ideal. That, in short, is my submission on these articles.

Counsel then went on to say that the next question with regard to Barindra was the consideration of the documents. There were very few documents referred to in the judgment and those were exhibits 76, 85, 239, 332 and 667.

Mr. Das then referred to these exhibits.

With regard to the evidence of the overt acts, as apart from the confessions, their Lordships would have already noticed the incident of the 10th April, which was spoken to by all the witnesses. There were evidence that Barin and others had gone to Chandernagore and the outrage on the Mayor followed the next day. With reference to that, Counsel would submit this: Their Lordships would find that there was one characteristic with regard to those incidents spoken to by different witnesses, namely, that whenever a particular person was specially deputed to a particular place, their Lordships would find an incident immediately followed. There were too many of such coincidence throughout. The police officers who accompanied Barin to Munkundu, were Purna Chandra Biswas, Norendra Mullick, Suresh Ghose and Balai Ganguli. There was evidence that Suresh was Barin's class fellow. Counsel submitted that under the circumstances it was absurd that Suresh would have followed Barin in the same railway carriage.

The story put forward before the committing Magistrate was on the strength of the confession made on the 2nd May. Afterwards the story was followed with many details. The story was therefore not entitled to be credited.

With regard to the Naraingarh outrage, Counsel pointed out rather glaring discrepancies between the confession of Barin and that of Bibhuty. After reading these two confessions, Counsel submitted that it looked too much like an attempt to get the corroboration of facts from Barin, which the police were in possession at that time.

Counsel would not trouble their Lordships with the Muzafferpore outrage, because the Sessions Judge had held that this overt act was not in furtherance of this conspiracy.

At this stage, the Court rose for the day.

TWELFTH DAY'S PROCEEDINGS.

Mr. Das continuing his address dealt with the charge under section 121A of the Indian Penal Code and submitted that a conspiracy meant a particular intent and combination or in other words an intent and agreement between the different persons charged. His authority for that contention was to be found in Roscoe's Book on Criminal Law, 12th edition, page 367.

After reading an extract from the book in question Mr. Das said the first question was this : Unless the prosecution could prove that all the persons charged were parties to that agreement the offence was not made out. The essence of the offence was the object with which the person charged agreed and the persons with whom he agreed. That was the particular charge brought in this case. A certain number of persons were necessary, but the offence charged in this case and the offence with which their Lordships were now dealing was that certain persons entered into an agreement to carry out a particular object. Unless the prosecution could prove that *in toto* the charge fell through.

The Chief Justice : If one is acquitted, the others must also be acquitted ?

Mr. Das : Yes. I would refer your Lordships to the decision of Lord Chief Justice Coleridge in the case of *Queen vs. Manning*.

The Chief Justice : That is the case in which the Lord Chief Justice held there could not be a conspiracy of one.

Counsel then went on to say that there was a difference between the pursuance of a particular object and the fact that there must be an agreement to carry that out. If the case for the prosecution—as stated in the form of indictment—was that five persons did enter into a particular agreement, the question was whether that was an offence. If it was, then all five must be guilty. A further question was that if guilty, were they guilty of an offence under section 121A ? His answer was it was not true that these five persons entered into that agreement.

Counsel next said he really could not understand the distinction between the case of *Queen vs. O'Connell* and this case. In a case of conspiracy the conduct or statement of each one was evidence against the others. The evidence in a case of conspiracy was made up of whatever was said and done by each one of the persons charged. Therefore the mind of the Jury or Court must necessarily be influenced by the whole of that evidence. That was allowed to be done simply because the essence of the crime charged was an agreement between these different persons.

Counsel then went on to say that the order of the Government being against some of these persons at one time and against others

from time to time, there was nothing to show an order of Government for the particular offence charged under section 121A. He had already argued that point fully. The times were different and the names of the persons were different.

The Chief Justice : There is nothing to show the conspiracy is the same.

Mr. Das : There is nothing to show it is the same conspiracy covered by the order.

Mr. Das continuing said :—The particular overt acts did not amount to one offence under section 121. If the particular overt acts did not amount to the offence of waging war and if the object of the agreement was to be ascertained by what was done in pursuance of the agreement—according to the case for the prosecution—his submission would be that the charge of conspiring would fall upon that. In this connection I would ask your Lordships to remember Barindra's confession as to the overt acts, namely, that the overt acts were not intended to serve independence. If that was so assuming these facts to be true—how far was this an offence under section 121A ?

Mr. Das then went on to deal with the offence under section 122 and said that also rested on the confession of Barindra as regards the collection of arms. He asked their Lordships to consider this. Barindra in his confession said : "We were always thinking of a far-off revolution and wished to be ready for it so we were collecting weapons in small quantities. Altogether I have collected eleven revolvers, four rifles and one gun."

Counsel said the question was what was meant by the use of the word "we." It might have been that what Barindra intended to say was that "we" was used in the same way as the word was used generally, and that people were thinking of a far-off revolution.

The Chief Justice : Does "we" refer to these persons he names ?

Mr. Das : Is that clear from the confession ? The question is not perfectly clear on the confession. It may very well have been that Barindra talked loosely and that "we" simply means "I".

Mr. Das next referred to the question of intention and cited a case reported in 25 Bombay, page 90.

Counsel next dealt with the confession as it stood.

Mr. Das then took up the case against Ullaskar Dutt. He referred to the exhibits found in the garden which, the prosecution alleged, tended to incriminate Ullaskar.

Counsel commented on these documents and had not concluded when the Court rose for the day.

THIRTEENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address said that when the Court rose on Saturday he was dealing with the documents relating to Ullaskar Dutt. He submitted if their Lordships rejected the confession, there was nothing in the documents which fixed the guilt on Ullaskar. The question then rose as to how far the shadowing witnesses fixed guilt on Ullaskar. As regards the shadowing witnesses what they found was that the evidence with reference to 15 Gopi Mohan Dutt's Lane was the evidence of Bolai Ganguli, Satish Banerjee and Suresh Ghose and the incidents of which that evidence was made up were the incidents of the 23rd April and the 26th April.

Counsel read the evidence of the various witnesses in connection with the evidence of the 23rd April and 26th April and submitted that evidence was unreliable and unsatisfactory and could not be accepted. That was the whole of the evidence against Ullaskar Dutt.

After reading a portion of the Sessions Judge's judgment Counsel said that so far as Bibhuti's confession was concerned he had pointed out to their Lordships at the time when he was dealing with the confessions generally that the whole of it was in answer to questions.

With regard to the documents Counsel submitted that there was nothing in the documents which implicated Bibhuti in any way. Their Lordships would recollect that there were two Bibhutis in connection with this case. One was Bibhuti Bhushan Sircar and the other was Bibhuti Roy. From the evidence of Inspector Purna Chunder Lahiri their Lordships got it that Bibhuti was connected with *Yugantar*.

Mr. Das then dealt with the watch witnesses and said that as regards the watch witnesses the Sessions Judge only referred to Bibhuti having been seen at 15, Gopi Mohan Dutt's Lane. That resolved itself into the incident of that 23rd April.

Counsel read the evidence of the watch witnesses and said if their Lordships proceeded on the confession the case of Bibhuti Bhushan Sircar stood on a different footing, but if their Lordships did not proceed on the confession then the evidence against him was not sufficient for a conviction.

Mr. Das then dealt with the case of Indu Bhushan Roy and read that portion of the judgment referring to this accused.

A point was raised as to how far their Lordships could take the confession of one accused as evidence against the other. That point, Counsel said, he would argue later when dealing with all the confessions.

Counsel then referred to that portion of the judgment of the Sessions Judge, where he deals with the case of Indu Bhusan, after which Mr. Das read the confession made by the accused. Counsel would not deal with these points as he had already dealt with them in his general observations.

Three documents were concerned in this case, namely exhibits, 56, 57 and 58. They should be dealt with together. The Sessions Judge based his conclusion with reference to these documents from the evidence of handwriting. Exhibit 56 was a note book and inside that book were found exhibits 57 and 58. The case for the prosecution was that these exhibits were in the pocket of a coat, which at the time of the search was claimed by Indu Bhusan Roy. Inspector Frizoni gave that evidence. Apart from the handwriting that was the only evidence of Indu's connection. It was after arrest that the things were found out and the question was how far that could be taken in evidence. Counsel then showed two dates to their Lordships—one was on the first page of the note book and the another on the fifth page. Counsel submitted that those two entries clearly appeared to be in the same handwriting and the handwriting is different from the handwritings in other pages in the body of the notebook. The character was entirely different. Further apart from the dates the different writings in the notebook are in the same handwritings.

Mr. Das said that with regard to the confession of Upendra there was one point which he desired to draw their Lordship's attention to, namely, that several portions of the confessions, as appeared, were not in answer to the questions put, but which, the case for the defence was, at least that was Mr. Das' instructions, were said in answer to questions put, but which questions were not recorded.

Counsel said that according to the case for the prosecution Ullaskar used to teach explosives. Indra used to make experiments with Barin, Prafulla and Bibhuty. It did not appear that Upen had anything to do with that side.

The Chief Justice: You say that he had nothing to do with that department.

Mr. Das: He said he was in charge of the education of the boys and this was a different department.

The Chief Justice: Except that he had the general knowledge. He himself said that.

Mr. Das: Yes, I am now dealing with the division of labour.

Mr. Das then referred to exhibits. One of the exhibits was a letter purported to be written by Krishna Jiban to Upendra. This letter was taken from the post office after the arrest. Counsel

did not know why it was referred to against Upendra except that Krishna Jiban was known to Upendra. If so, so far as Upendra was concerned it did not show any conspiracy on his part but the reverse of it. Exhibit 774 was the monkey letter. It was found at Seal's Lodge. The letter contains "the condition of the garden is very bad. The monkeys are entering the garden." The case for the prosecution was that "monkeys" referred to police. Counsel submitted that at that time there was no suggestion of any watch being kept by the police. A corner of that letter was torn off. Who could have torn that corner? Certainly the conspirators would not have done it in that way. The conspirators would have torn off the whole letter.

FOURTEENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address said that on the previous day he was dealing with the case of Upendra Nath Banerjee and the "monkey" letter. Counsel had already submitted that this was a suspicious letter the address whereof seemed to be torn off and the postscript seemed to be in another ink. It was the postscript which established the connection between the garden and Seal's Lodge. There was no evidence as to who wrote that letter. The Sessions Judge compared the handwriting with that of another letter, with which Counsel would deal in connection with the case of Sudhir.

The next document was exhibit 776 which was a slip of paper. It contained "Upen Babu, just little before I wrote a letter and posted it. 2nd Chaitra, Sunday." It was not proved in whose handwriting it was or which Upen Babu it meant.

Continuing Mr. Das said that the next exhibit was a money-order receipt which was dated the 13th February and signed by a man of the name of Prokash Chandra Ghose. It was sent to Upendra Nath Banerjee at his garden address. The receipt bore the signature of Upen and that of Indra Bhusan Roy Choudhury as a witness. The post office from which the money order was delivered was the Bagbazar Post Office.

Carnduff J: Was this found in the garden?

Mr. Das: It was produced by the post office authorities. It is a receipt.

Continuing Mr. Das said that Upendra was an educated man and he knew how to sign his name. Why should his signature be witnessed. That procedure was necessary in case of a man who could not write his name.

Mr. Das then referred to exhibit 1007 which was signed by one S. Ghose. The case for the prosecution was that it was Sudhir. Counsel would deal with this when he would take up the case

of Sudhir. This exhibit showed that money was sent to Upendra at 32, Mooraripukur Road, on the 2nd March, 1908. Here they did not find Upendra's signature being witnessed by any body.

Those were all the documents upon which prosecution relied to prove Upendra's connection with the Seal's Lodge. Counsel submitted that none of those documents had been proved in any way. The money orders were produced by the post office authorities and the other two documents were found at the Seal's Lodge. They were not found in possession of Upendra nor of any of the accused.

Continuing Mr. Das said that to corroborate the evidence, the prosecution had tried to prove Upendra's presence at the Seal's Lodge. Tarini Rout gave evidence upon that point. Counsel then referred to exhibit 201, an account book and said that that note book contained the entry of "U. B.", which, the prosecution said, meant Upendra Nath Banerji.

There was another piece of oral evidence to the effect that on the 1st July, 1907, Inspector Lahiri went to search Champatolla Road in connection with the *Yugantar* where he found Upendra seated rubbing oil. Counsel did not think that it would serve any useful purpose by placing that evidence. Counsel also would not deal with the watch witnesses because the Sessions Judge did not refer to them in his Judgment. If Mr. Norton dealt with them, Mr. Das would show that the whole of it resolved itself into the evidence of Satish and Suresh.

The next case Mr. Das would take was that of Rishikesh Kanjilal, who was arrested at Chatra near Serampur on the 10th May. On the 10th May his house was searched at 8 A. M. After that he was arrested and the Inspector left the place with him at about 12 o'clock or 1 o'clock. The Inspector said—Counsel was quoting the Inspector's own words—that in the train Rishikesh shewed a disposition to confess. He got out at Howrah that very afternoon and Rishikesh was taken from there to Kyd Street, the house of the Commissioner of Police, and from there to Royd Street, the Calcutta Detective office, where things and articles were made over to Inspector Gupta. Rishikesh was taken from there to 56, Amherst Street the place where Ramsaday Mookherjee of the Bengal C. I. D. used to live. The evidence was that Rishikesh was taken to Amherst Street where questions were put to him by Ram Saday and Inspector Kedarshur. Kedarshur took down the answers of the accused. Rishikesh was kept the whole night at 56, Amherst Street, and was produced before Mr. Birley at 10 a. m. the 11th May. Counsel submitted if the accused showed a disposition to confess why was he not taken at once before the Magistrate and put up to have his confession recorded? Why was it necessary that questions should be put to him by Ramsaday and that he

should be taken from house to house and kept at Amherst Street the whole night before being produced before the Magistrate.

Counsel then read the confession made by Rishikesh from which it appeared that he did not become a member of the conspiracy, but he was making his way towards it. So far as the overt acts were concerned, he was not taken into confidence with regard to the Kharagpur incident, but with regard to the futile attempt for which Rishikesh's assistance was required. The whole question was whether he was a member of that conspiracy so as to bring him under section 121A. Counsel submitted that the evidence did not quite come up to the standard as there was no evidence.

Mr. Das then referred to the incident of the 5th November, which was a futile attempt for which Rishikesh's assistance was required. It was an incident of his hiring a carriage and going to Chandernagore.

Mr. Das then referred to some exhibits, which were letters, and said that those referred to Swadeshi and relief work and they did not prove any conspiracy. Exhibit 797 was supposed to be a rough plan of Ramsodai's house in Amherst Street. It showed the junction between Harrison Road and Amherst Street. Ramsodai's house would be a mile from there. There was nothing in the map to show that the place marked in the map—rather the faint mark—was Ramsodai's house.

The Chief Justice : Where was it found ?

Mr. Das : At Chatra.

Continuing Mr. Das said that the next exhibit against his client was No. 667, which was found at 131, Harrison Road, and it contained a list of initials. In one place of that document it was written "H. B." The case for the prosecution was that it referred to Rishikesh Kanjilal as Hrishike h Bhattacharjee.

Continuing Mr. Das said that in another place Rishikesh's initial as given as 'R. K.' Why should there be two different initials in two different places ?

Exhibit 1415 was a book containing a number of Swami Vivekananda's speeches. There was nothing incriminating in them. The book belonged to Rishikesh and was found in the garden. The prosecution alleged that this book proved Rishi's connection with the garden. Counsel submitted that Rishi and Upendra being known to each other and Upendra being a resident of the garden, the book found its way there. Those were all the documents with regard to Rishikesh.

Mr. Das then dealt with the watch witnesses. The witnesses who deposed that they had seen Rishikesh at the garden were Satish Chandra Bauerjee, Chandi Charan Mukherjee, and Narendra

Nath Mullick. Counsel read their evidence and said that the evidence of Satish and Chandi were not relied upon by the Sessions Judge on many points. The only evidence he relied on was that of Narendra, whose evidence was of a very general character. Counsel submitted that their Lordships could hardly rely upon a bare statement like that. No incident was alluded to by that witness.

Continuing Mr. Das said that was the whole of the case against Rishikesh Kanjilal. That concluded the cases of all the appellants against whom there were confessions. There were two other confessing appellants, Sudhir and Krishna Jiban, but their confessions, according to the Sessions Judge, did not amount to confessions and so Counsel would not deal with them now. With regard to the confessions Counsel had already made his submissions. He would now deal with the point as to whether their Lordships would accept the confession of one of the accused against the others. All the confessions were retracted.

Mr. Das then said that the question whether their Lordships would accept the confessions or not depended on the construction of section 30 of the Evidence Act. Counsel read Section 30 and said that the first question was as to whether the appellants were jointly tried for the same offence. Counsel had already dealt with that point and he would not deal with it again. The second point was the meaning to be attached to the words "may be taken into consideration" in the section and that again would depend on whether those statements made by them amounted to confessions as to the offence charged. Unless and until the confessions on the face of them amounted to confessions of the offence with which they were charged, they went out of section 30. Counsel would submit that on the face of those documents they could not amount to confessions. They might be admissions. Counsel then cited 24, Weekly Reporter, page 42, and 1. L. R. 4, Calcutta, page 483, in support of his contention. Counsel next referred to what the Sessions Judge had done. First of all, he quoted from the *Yugantar*, then he referred to the confessions and afterwards he said, "I therefore hold there was a conspiracy to wage war." The next question to which he directed himself was merely this: "Who were the persons who were connected."

The Chief Justice: Is not that rather a defect in form than defect in substance.

Mr. Das: The Sessions Judge has not made any distinction amongst the different accused when he was considering the question as to whether there was or was not a conspiracy charged.

The Chief Justice: Your proposition is this. Let us take the confession of Barin for instance. Assuming for the sake of argu-

ment that Barin had said there was a conspiracy in order to establish the membership of the conspiracy, as against some one mentioned by Barin, is it required that there should be evidence of some kind over and above the fact that his name was mentioned?

Mr. Das : That evidence must be sufficient by itself to establish the conspiracy.

Mr. Das continuing said that he would next deal with the case of Paresh Chandra Maulik. He was acquitted by one of the assessors but was convicted by the other as well as the Judge. The documentary evidences as against this accused were several and Counsel would deal with exhibit 81 first, which was a very important piece of evidence according to the prosecution point of view. The exhibit 81 was an envelope, in which, the prosecution said, was a letter, exhibit 80. The letter was addressed to Paresh at 41-3 Harrison Road. The envelope contained the post mark of Chilmari, while the letter was written from Jessore. Mr. Das submitted that that envelope could not have contained that letter. The letter was addressed to Srijut Paresh.

The Chief Justice : The word 'Srijut' indicates that the addressee must be younger in years.

Mr. Das : Yes. In the body of the letter it was written "Apanadar" (yours), which is addressed only to the elders. According to the envelope the letter was addressed to a younger person and according to the letter it was written to a person who was older than the writer.

The Court then rose for the day.

FIFTEENTH DAY'S PROCEEDINGS.

On Tuesday, when the Court rose, Mr. Das was dealing with the cases of those appellants who had not made any confession in the lower Court. Counsel first took up the case of Paresh Chunder Moulik and dealt with the exhibits against him and the evidence of watch witnesses.

It had been said that Barin in his confession referred to Paresh as one of the men in the garden. Counsel said that Barin was asked who were the men in the garden at the time he was arrested and he named Paresh as one of the men who were being then instructed on religious and political subjects. Mr. Das said that this certainly did not go against Paresh. Mr. Das also read portions from the confession of Ullaskar which referred to Paresh. According to Ullaskar, Paresh was not an active member.

Mr. Das then went on to deal with the case of Sishir Kumar Ghose. In this connection their Lordships would remember that one of the Assessors with his opinion gave his reasons while

the other did not. Counsel then dealt with the exhibits in his case.

The Chief Justice: What do you say is the net result of the documents?

Mr. Das: I submit that these documents merely shows that, at some time or other Sishir went to the garden from the fact of the finding of these documents. None of these documents were incriminating in the sense that they contained nothing to show that he was a conspirator. As to whether your Lordships in this case infer requisite objects that depends on the length of his stay at the garden but of that there is no evidence. Unless your Lordships can fix the length of his stay in the garden no such inference arises.

Continuing Mr. Das said that in this case there were no overt acts from which one can gather intention. He then referred to the watch witnesses and said that the evidence given by them was not credible, because some of them saw Sishir in Calcutta, at a time when it was admitted he was in Bombay. Counsel then drew their Lordships' attention to the fact that in the course of the trial a judgment was admitted. Sishir was once bound down to keep the peace at Jamalpur and that fact was admitted.

The Chief Justice: How is it admissible?

Mr. Das: I objected to this.

Mr. Norton: We wanted to show that he defied the law once.

The Chief Justice: In other words you were proving the previous conviction during the trial.

Mr. Das: The learned Sessions Judge himself referred to that and took that into consideration in coming to the conclusion whether this man was guilty or not. Not only it was as a fact which was proved but the findings of the judgment under which he was bound down were also put in and treated as evidence in the case. My submission is that it is wholly irrelevant.

Mr. Das had not concluded when the Court rose for the day.

SIXTEENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address said that when the Court rose on Wednesday he was placing the judgment with regard to Sishir Kumar Ghosh before their Lordships.

Counsel read the portion of the judgment relating to Sishir and submitted, it would have been a very different judgment had not the Sessions Judge considered the judgment in the Jamalpur case and had he not taken it as a fact that Sishir was connected with the *Yugantar*. Both these pieces of evidence, Counsel

submitted, were not evidence in the case. Where there was any evidence dealing with the case of the other persons, the Sessions Judge had explained it away on the ground that it might refer to some one else. The Sessions Judge's reasons for holding that the entries on the account book referred to Sishir were that Sishir was connected with the *Yugantar* and that he was "a man of that disposition." There was no evidence at all on the record to show that Sishir was at the garden at all except as disclosed by the Bombay letters. If the Sessions Judge took it that except for those two facts, the journey to Bombay was innocent, then there was nothing against Sishir upon which a conviction could be based. Sishir was shown not to have been in the garden at a time when any of these overt acts took place. He was away from the garden when the more important overt acts were undertaken. Unless their Lordships held that the entries with regard to February in that account book referred to this Sishir, there was nothing against Sishir. Under these circumstances, it was quite clear that he was not guilty of the offences charged. As a matter of fact, Sishir went to Bombay to join a weaving school there and on his return to Calcutta, as no other accommodation was available, went to the garden where he stayed for a day or two, when he was arrested there. The case against Sishir stood on exactly the same footing as the case against Hemendra Nath Ghose, who had been acquitted.

Counsel then read Sishir's confession and said Sishir did deny having received these letters. Sishir might have said that out of fright. It must be borne in mind that Sishir was very ill at the time and had thrice fainted in the dock. He had nothing more to add as regards the case of Sishir.

Mr. Das then took up the case of Abinash Chandra Bhattacharya, who was convicted under Sections 121 and 121A of the Indian Penal Code and sentenced to transportation for life. Both the assessors acquitted him.

Counsel next went on to say, the case of Abinash was a case in which their Lordships would find that the prosecution wanted to strike at Arabinda through Abinash. He was living with Arabinda at 23 Scott's Lane and also at 18 Grey Street where he was arrested. Some time ago Abinash was a mohurir in the Court of the District Judge of the 14 Parganas. After that, in May 1907, he purchased the Sadhona Press. Counsel would show that that was a purely business transaction. The "*Yugantar*" newspaper began to be printed in the Sadhona Press in May or June 1907. In July 1907 Abinash was prosecuted for sedition with reference to an article which appeared in the "*Yugantar*" of the 30th July. In that case he was acquitted. The prosecution could not prove his connection with the "*Yugantar*" in any other way except that he was the owner of the press where the

"*Yugantar*" was printed. It was also proved in that case that that issue of the "*Yugantar*" was not printed there but elsewhere. After his acquittal—the evidence as regards that was clear upon the record—he severed all connection with the *Yugantar* and sold the press to a man named Nikhileswar Ray Moulick.

Continuing Counsel said, their Lordships would find that after Abinash's acquittal on the 2nd September, the printing of the *Yugantar* was stopped until November. In November, Abinash wrote to the postal authorities that he had severed his connection with the *Yugantar* and that any letters addressed to him as manager should be sent to the then manager. There were altogether eight searches of the *Yugantar* commencing in July, 1907, and ending in April, 1908. In not one of the searches was Abinash ever found except in the first search on the 1st July, 1907, at 41 Champatolla Lane where he had his press. Besides as regards his connection with Arabinda, he seemed to have been devoted to Arabinda and looked after Arabinda's household affairs. There was nothing in the evidence to suggest that Abinash was a conspirator. When Abinash left the *Yugantar*, he had to live somehow and he selected certain articles from the *Yugantar*, and published them in book form, the name of the book being "Mookti Kon Pathe." All these were articles which appeared in the *Yugantar* up to, and not later than December 1906. There was no prosecution for sedition with reference to any of these articles.

Carnduff J. When did he publish them ?

Mr. Das : In January 1907. It was not done surreptitiously. It was registered and openly published.

Counsel continuing said that when Inspector Purna Chandra Lahiri searched the press on the 1st July, he found the manuscript and proofs of this book "Mookti Kon Pathe" and took them away for inspection, but no prosecution was started. In June 1907, the Government sent a warning letter to the *Yugantar* in which they complained about the recent issues of the *Yugantar*.

These were the circumstances, said Mr. Das, under which Abinash published this book but that was not an act of conspiracy. Another book that Abinash published was "The Modern Art of War." This book was also registered in October 1907 but no steps were ever taken in connection with it although it was before the police and the Government. The case for the defence was that this book was reviewed in the Government *Gazette* as a scientific treatise on warfare. It was also reviewed in the newspapers. In not one of the various documents found was the slightest reference made to Abinash as a conspirator. Their Lordships would find that copies of these books were found in the garden but they were fresh as if kept in a library and the pages were uncut.

Counsel then went on to say that in not one of the documents found in the garden was any reference made to Abinash as a conspirator with the exception of one item on some account where it was said that some money was spent in purchasing copies of the "Mookti Kon Pathe." As regards the oral evidence against Abinash, the evidence of everyone of the watch witnesses concerning him had broken down.

Continuing Mr. Das said that there was nothing in the evidence of the watch witnesses which established guilty knowledge on Abinash's part.

Counsel would next deal with the documents, with regard to which his submission would be that many of them were not admissible in evidence. Exhibits 130-1 and 130-2 were two receipts for the Government revenue of the garden dated 24th July 1907 and 26th July 1906 respectively.

The second one contained no reference to Abinash. The first one showed that Abinash deposited the revenue.

The Chief Justice: I do not suppose it was put in as evidence against Abinash.

Mr. Norton: It was put in for the purpose of showing connection between Abinash and Barin.

The Chief Justice: How can you do that? What evidence is there that Abinash did pay?

Mr. Norton: Assuming him to be the same man I submit I am entitled to refer to this statement as true—the statement that the revenue was paid by Abinash. Of course I do not say that he was the same man.

The Chief Justice: I do not find under what section it can be admitted as evidence.

Mr. Norton: It was found in the garden. I tendered this assuming that Barin asked Abinash to pay the revenue: of course assuming that Abinash was the same man.

The Chief Justice: Under what section does it come? There is a very well-known case of an English Railway Company which shows that a receipt of this kind is no evidence at all.

Mr. Das: That is the principle on which documents are admitted everyday here.

The Chief Justice: I do not know whether this is an official document.

Mr. Das: This is not an official document, because it is Khash-mahal. Even if it be an official document it must prove itself. It does not prove the particular fact.

The Chief Justice: Yes. That does not prove the statement contained in it.

Mr. Das: I do not know under what section it was put in. I objected to it.

Mr. Norton: It is clearly against Barin.

The Chief Justice: Not against Abinash?

Mr. Norton: Having got it I say under the general charge of conspiracy we are entitled to put in that. We say Abinash was a co-conspirator.

The Chief Justice: Does it appear that this is a statement of Barin?

Mr. Norton: I submit not. Under section 10 of Evidence Act I am entitled to use it against Barin.

The Chief Justice: You said just now this is not a statement of Barin.

Mr. Norton: My suggestion is that he sent the money through Abinash. He used Abinash as agent to pay the money. Abinash did pay the money and therefore his name is there.

Mr. Das: There are two conditions of section 10 of the Evidence Act. If it is under section 10 then it must be with reference to the conspiracy. This rent Barin would pay, whether he was a conspirator or not, as the owner of the garden. I submit it is no evidence. In the second place assuming that it is evidence it does not prove anything against him.

Mr. Das then placed several documents before their Lordships and submitted that none of them showed that Abinash was a conspirator.

SEVENTEENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address said that when the Court rose on Thursday, he was dealing with the case of Abinash Chunder Bhattacharjee and was referring to the two books "Mukti Kon Pathe" and "The modern Art of War," which, according to the case for the prosecution, Abinash published.

It would be more convenient if he gave their Lordships all the points there were in the evidence as regards the connection of Abinash with the *Jugantar*. That evidence began with the evidence of Purna Chunder Lahiri when he said that soon after the *Jugantar* was started in June 1906, he went to make enquiries at 27, Kanai Lal Dhur's Street, and there saw Upendra Lal Dutt and Abinash Chunder Bhattacharjee. Counsel did not admit that and would not only show that documentary evidence was against it, but that the statement of Purna Chunder Lahiri itself was very doubtful.

After reading Purna Chunder Lahiri's evidence on that point, Mr. Das said that in July 1907, the Chief Presidency Magistrate passed an order confiscating the Sadhana Press, and that press was, as a matter of fact, confiscated on the 27th July 1907. Abinash then moved the High Court and the order of confiscation was set aside. That case was reported in 10 Calcutta Weekly Notes, page 1046.

Carnduff J.—When was that?

Mr. Das.—On the 6th August, 1907.

The Chief Justice.—It was set aside on the ground that there was no power to confiscate?

Mr. Das.—Yes: also on the ground that it was done without any notice to Abinash. I don't argue that the order setting aside the confiscation shows that Abinash was innocent of everything. My point is that the Press was, as a matter of fact, confiscated and that it remained under confiscation and that the issue of the *Jugantar* of the 30th July, in respect of which Abinash was prosecuted, was not from Abinash's press at all. That particular issue of the *Jugantar* was printed at the Kushab Printing Works with which Abinash had nothing to do. On the 2nd September 1907, Abinash was acquitted and on the 3rd, 4th or 5th of that month he sold the press to Nikhileswar.

From September to the middle of November there was no issue of the *Jugantar*. This was corroborated by the issue of the *Jugantar* of the 16th November 1907 in which there was a notice to subscribers. That notice had not been translated, but if their Lordships did not mind, Counsel would translate it. It was to this effect: "submission by the *Jugantar* to the subscribers. After the conviction of Basanta Kumar Bhattacharjee no other printer having been available the *Jugantar* was not printed till now." The last paragraph of that notice stated:—On account of the change of manager, money-orders and value payable parcels are lying in the post office. That money on account of the change of manager, the conductors of the *Jugantar* have not been able to get and for that reason the conductors have not been able to send the *Jugantar* to the subscribers.

That, Counsel submitted, corroborated Abinash's case that he gave up all connection with the *Jugantar* after the 2nd September. Further there were two letters which made that fact perfectly clear. One was a letter dated the 7th November 1907 from Abinash to the postal authorities informing them that he had severed all connection with the *Jugantar*, and requesting them to make over all letters etc., in his name to the present manager of the *Jugantar*. Reading this in connection with the notice, it made things perfectly clear. Abinash did not sever his connection with the *Jugantar*

in November but in September and as the *Jugantar* people could not get letters, money orders and parcels they asked Abinash to write that letter in November. The other letter was dated the 13th November 1907, and was from Tara Nath of the *Jugantar* to the postal authorities informing them that the *Jugantar* people complained that letters, money orders and parcels had not been sent. The fact that there was no issue of the *Jugantar* between September and the middle of November, was also clear from the declaration of the printer. There was no declaration whatever by Abinash at any time except his declaration in May 1907, that he was the owner of the Sadhana Press. Counsel then submitted that the copies of the books "Mukti Kon Pathe" and "The Modern Art of War" alleged by the prosecution to have been found in the garden, were not found there but at 4, Harrison Road.

The Chief Justice :—I don't understand it to be said that "the Modern Art of War" is seditious ?

Mr. Das.—No.

The Chief Justice.—But as regards "Mukti Kon Pathe" ?

Mr. Das.—The Sessions Judge says it is admitted to be seditious. It is a reprint of certain articles in the *Jugantar* and is published in book form. The articles are of such a nature that your Lordships may hold them to be seditious while other Judges may hold them to be not seditious.

Counsel then read the portion of the Sessions Judge's judgment referring to Abinash as well as the opinions of the Assessors, both of whom acquitted him.

Mr. Das then dealt with the case of Sudhir Kumar Sarkar who was also acquitted by both Assessors.

After reading the evidence of the watch witnesses, Mr. Das went on to deal with the documents showing Sudhir's presence in Calcutta. The confession of Sudhir was very clear on that point and he stated that he was not in Calcutta. Exhibit 151 was a letter dated the 23rd April. It was a letter supposed to have been written by Indra Bhusan to Sishir in Bombay in which it was stated "Sudhir Babu has not come as yet." The case for the prosecution was that the Sudhir there referred to the present appellant, while the case for the defence was that it did not refer to the appellant. If it referred to the present appellant it showed that on the 23rd he had not come to Calcutta. From exhibit 1262 it appeared that before the 2nd May, Sudhir was at Khulna. From the evidence of Narendra Sircar it was clear that Sudhir was at Khulna on the 7th March and that he was there up till the 20th.

Continuing Mr. Das said that there were two classes of evidence—evidence of the watch witnesses and opposed to that were exhibits

151 and 1262 and the evidence of Narendra Sircar. The Sessions Judge had dealt with that part of the case in one line where he had said that the identification of these witnesses must be received with caution. In view of the opinion expressed by the Sessions Judge, Counsel would not deal with this part of the case any longer.

Mr. Das next dealt with the exhibits as against Sudhir.

EIGHTEENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address on behalf of Sudhir Kumar Sircar said : there were three or four Sudhirs and there was nothing in the documents found to show which Sudhir was meant. Then again there were several Sudhirs who stayed at the garden. If their Lordships were satisfied that exhibit 774 was written by Sudhir, then his case stood on a different footing. Exhibit 774 was a post-card addressed to Upendra Nath Banerjee, Sil's Lodge, Deoghar, and was signed by Sudhir. There was nothing in that post-card about the garden except the postscript which ran as follows :—"The condition of the garden is bad : monkeys are entering. There is possibility of spoiling. The boys are like that." If their Lordships were not satisfied that Sudhir wrote that post-card then the case against him was one of mere suspicion only.

The Chief Justice : I don't know, Mr. Norton, whether you say Sil's Lodge was a place of conspiracy in that sense or a place where a certain number of persons, according to your view of the evidence were shown to have been.

Mr. Norton : We go further and say that they were there for conducting experiments in chemistry in furtherance of the conspiracy.

Mr. Das continuing said it was a significant fact that in not one of the confessions was there the slightest reference to Sil's Lodge. If the confessions were true then that was a significant omission. The nearest approach to chemical experiments was a label, while the nearest approach to bombs was nine pieces of tin.

Another line of argument, continued Counsel, to show that Sil's Lodge was a place of conspiracy, was that certain documents or articles which were at Sil's Lodge were now found to be at 134, Harrison Road, and at the garden. The first one was exhibit 276, a gunny bag found in the garden on the 6th May with the words—"P. Chaki, Baidyanath" written on it.

Counsel then went on to say that the next article was exhibit 641 which was said by the prosecution to be a plan of Sil's Lodge found at 134, Harrison Road. That plan was shown to Debendra Nath Sil, the owner of Sil's Lodge, who could not make it out.

Then there were certain letters which passed between Prokash Chandra Ghose who lived there and Debendra Nath Sil. These letters were found at 134, Harrison Road. On the 7th May another plan was found in the garden and the prosecution said that this was also a plan of Sil's Lodge. It had not been made out that these were plans of Sil's Lodge.

Counsel then said that his submission would be first that it was not proved that these were plans of Sil's Lodge. Secondly assuming they were plans of Sil's Lodge, it merely proved that Prokash Chandra Ghose who lived there brought his letters to 134, Harrison Road. How did that affect the case of Sudhir ?

Mr. Das next referred to a point which was made that many a time a man who was found to be given to preaching Swadeshi was also given to picketting and from it the prosecution took it that the man would naturally show a predilection for waging war against the King or conspiracy. Counsel disclaimed that insinuation altogether. There were many men in this country who were strong Swadeshites but who would never dream of conspiracy or waging war against the King. There was a sharp line of distinction between waging war against the King and politicians of all schools in Bengal. The one was not to be confounded with the other.

The Court rose for the day.

NINETEENTH DAY'S PROCEEDINGS.

Mr. Das continuing his address dealt with the case of the Sylhet brothers, Susil Chandra Sen and Birendra Chandra Sen. He would take up the case of Birendra Chandra Sen first. He was convicted under all the sections namely, sections 121, 121A and 122 of the Indian Penal Code. Counsel would submit, as the Sessions Judge had said, that neither in the correspondence nor in the oral evidence was there any connection between Birendra Chandra Sen and any of the centres of the alleged conspiracy. There were certain letters found not in the garden but at Sylhet which the Sessions Judge thought inflammatory. Those letters referred to physical exercises and self-defence and their Lordships would find the case for the defence was that they were written at or about the time of the Comilla and Jamalpur riots. It seemed, as far as could be judged from the correspondence, that they tried to start an organisation for self-defence as against the Mahomedans.

So far as the watch witnesses were concerned, Counsel said, he need hardly trouble their Lordships because he had already pointed out that when the watch witnesses said they saw Birendra there, Birendra was, as a matter of fact in Sylhet and the Sessions Judge had rejected that evidence.

Counsel next referred to the various documents found in the garden which, the prosecution alleged, implicated Birendra Chandra Sen and said that in this case there was another B. C. Sen. It was for their Lordships to draw what inference they thought proper from the documents found in the garden. Then they came to the Sylhet articles and documents.

Continuing Counsel said that as regards the articles and documents found in Sylhet there was no reference in the documents to the garden at all. The first article found was a packet of explosive powder containing sulphite of lead, sulphur and red peppur. These were ingredients for making matches.

Counsel continuing said the first point the prosecution made of this was that it was not found by itself but in a canvas bag where there were two note books containing copies of formulæ. Major Black's evidence was that the powder by itself was not an explosive but the addition of chlorate of potash and amorphous phosphorus would have made it so.

Mr. Das submitted that an explosive was not necessarily a bomb and that that expression had been used very loosely. Amorphous phosphorus taken with chlorate of potash was an explosive, but it was not a bomb. One could make a bomb out of amorphous phosphorus. The note book contained a description of a number of different kinds of explosives with the proportion of these ingredients. One contained the ingredients, chlorate of potash, sulphate of antimony, sulphur, red pepper and amorphous phosphorus with nitro-glycerine or water proportionately. The Sessions Judge found those were the ingredients for a bomb but Counsel submitted those ingredients were used for the making of matches. After the Sawdeshi movement began in this country there was a good deal of enterprise in making matches, pencils and other things for sale.

These articles were found in the south house. There was nothing to show that Birendra had anything to do with them. According to the case for the prosecution Birendra came out from the west house and not from the south house. Assuming that these were experiments towards making a bomb, how did that connect Birendra with the Calcutta conspiracy.

The Chief Justice: I suppose you would put your case that even if this led to the conclusion that he was conspiring to wage war it would not justify his connection.

Mr. Das:—That is my submission.

Counsel submitted that there was absolutely no connection between Birendra and the alleged conspiracy. If anything was to be based on the ingredients that went to make a bomb there was no connection because they knew that was not how bombs were made in the garden. Then again it was Hem Chunder Sen who

got these ingredients but he had been acquitted while Birendra had been convicted. As regards the two above letters they were before the period covered by the charge and did not establish Birendra's connection with the conspiracy.

Mr. Das then dealt with the case of Susil Kumar Sen who had been convicted under section 121 and 122 and sentenced to transportation for seven years. Counsel would not trouble their Lordships with the evidence of the watch witnesses regarding Susil, because the Sessions Judge thought that they were unworthy of credit and when summing up the case against Susil, he did not refer to the watch witnesses at all.

Mr. Das would next deal with Ex. 475. It was Biren's diary in connection with Susil. It ran thus "Oh mother, we cannot, we cannot, we cannot hear this agony any longer. Mother's call has come. It does not behove one to stay at home. I give up going to school. I leave my home, friends and relations perhaps I leave them for ever. To Calcutta I shall again return. To my home I shall not return again. To God I shall look up for help and my work must be accomplished. Father, mother, brother, sister, all shall weep, but I am going into the lap of one who is the mother of thirty crores of sons." The Sessions Judge referring to the last sentence said that the appellant was going to risk his life otherwise the "lap of the mother" did not mean anything else. The construction was based on a misunderstanding.

Referring to the Sessions Judge's judgment, Mr. Das said: The Sessions Judge said that Susil was the recipient of a *lathi* from the notorious Leakat Hossain, a *lathi* provided with a spearhead at one end and heavily weighted at the other, not the sort of weapon to use for ordinary physical exercise. What connection had Leakat Hossain with this case, I do not know. Leakat Hossain was convicted of seditious and therefore it was brought in. Unless your Lordship take it that this was a conspiracy and the conspiracy included all kinds of conspiracy after the partition of Bengal I submit that there is no connection between Leakat Hossain and this conspiracy. Mr. Das then submitted that no offence had been made out against Biren and Susil and both of them were acquitted by the Assessors.

Mr. Das then said that he would next deal with the case of Nirapado Roy, who was arrested at No. 15, Gopi Mohan Dutt's Lane. Both the Assessors found him not guilty. He was, however, convicted under sections 121A and 122 of the Penal Code and was sentenced to ten years' transportation.

Continuing Mr. Das said that so far as the documents were concerned, they did not touch this appellant. Counsel then went on reading the evidence of the watch witnesses and had not concluded when the Court rose for the day.

TWENTIETH DAY'S PROCEEDINGS.

Mr. Das continuing his address said that on Monday he was dealing with the case of Nirapado Roy and was dealing with the watch witnesses. Counsel dealt with the evidence of the watch witnesses Suresh, Satish and Sarat Palit.

Mr. Das next dealt with the exhibits. Exhibit No. 76 was a note book containing not the name of Nirapada., but of Nirmal. The case for the prosecution was that Nirmal was the name of Nirapada. Counsel could not say if there was any evidence at all in the record with regard to that. The prosecution called certain witnesses from Midnapur and two of them referred to Nirapada as Nirmal. They did not however say that he was Nirmal Ganguli as was mentioned in the note book. The Sessions Judge took Nirmal Ganguli to be the same as Nirapado Roy. Counsel submitted that Nirapado Roy could not be called Nirmal Ganguli.

Continuing Counsel said—Nirapada might have been arrested at 15, Gopi Mohan Dutt's Lane, but there was no evidence to show he was living there in the same way as to be held responsible for everything found in the house. His suggestion was that the words "the premises No. 15 Gopi Mohan Dutt's Lane" must have been put into this document because the signature followed too close upon these words.

Mr. Das then dealt with the rest of the documentary evidence against Nirapada and submitted that his connection with the conspiracy had not been proved beyond all reasonable doubt.

Mr. Das then took up the case of Sailendra Nath Bose who had been convicted under all the three sections 121, 121A. and 122, and sentenced to transportation for life.

After reading the portion of the judgment referring to Sailendra, Counsel said that the only documentary evidence against Sailendra was exhibit 78 where the initials "S.B." appeared. " "

As regards Sailendra's connection with the *Jugantar*, Mr. Das said that when Abinash started the *Sadhana* Press in July 1907, Sailendra and his brother Dindoyal were staying in the same house in which the press was. Dindoyal had been acquitted. Sailendra was a sort of hanger-on and was assisting Abinash to manage the press. In the first search list in connection with the *Jugantar* their Lordships would find the name Bhupendro as editor, the name Abinash as manager and the name Sailendra as sub-manager. That was the whole of the evidence connecting Sailendra with the *Jugantar*. In none of the subsequent search list did Sailendra's name appear. It was not stated that Sailendra contributed to the paper or that he paid money to carry on the paper. Counsel failed to see how on that evidence it could be alleged to have

been proved that Sailendra was connected with the *Jugantar* and took part in the conspiracy charged in this case.

The second point against Sailendra was that he was arrested at 48, Grey Street. From that the Sessions Judge came to the conclusion that he was living at 48, Grey Street ; as a matter of fact the documentary evidence in this case showed that he was not living there but at Jugal Kishore's Lane. The point seemed to Mr. Das to be immaterial. There was a receipt showing that he was living at Jugal Kishore's Lane.

The third point against Sailendra was his connection with the Sil's Lodge. Their Lordships found a reference to that in the money order sent to Upendra. The only evidence as to his connection with the Sil's Lodge was that of the Postmaster who did not know his name but identified him as one of the men he had seen there. That identification was very weak and could not be relied upon. That was the only evidence which connected Sailendra with Sil's Lodge. There was absolutely no reference to Sailendra in any of the numerous documents put in.

Mr. Das then took up the case of Kristo Jiban Sanyal. Counsel did not propose to take their Lordships through the various documents relating to this accused. He proposed to place that portion of the judgment relating to Kristo Jiban before their Lordships which contained a reference to one or two documents on which the Sessions Judge relied and his submission would be that on that judgment Kristo Jiban should have been acquitted. His age was shown on the 27th February 1909 to be sixteen years.

Continuing counsel said Kristo Jiban made a statement before Mr. Birley which he submitted, was not a confession. The case for the prosecution was that Kristo Jiban was a fortnight at the garden.

Continuing Mr. Das submitted that the statement of Narendra Ma'ick that he had seen Kristo Jiban Sanyal at No. 15, Gopi Mohan Dut's Lane was not worthy of credit under the circumstances Counsel had already submitted before their Lordships.

Counsel then read the statement of Kristo Jiban made before Mr. Birley, and said that from that confession or statement, whatever it was, beyond the fact of Kristo Jiban's living in the garden for fifteen days, their Lordships could not get anything else. In answer to the question by Mr. Birley to Kristo Jiban as to what took place in the garden the latter made a statement, but that was inadmissible. If it was inadmissible then the only thing left was his stay in the garden. In connection with this Counsel would refer to one fact. No doubt two or three bombs were found in the garden. Some chemicals were also found there. The evidence of the expert was that with those chemical picric acid

might be prepared and picric acid was necessary for the preparation of bombs such as they had in the garden. They had a laboratory there.

Carnduff J : What did they teach ?

Mr. Das : Chemistry. I am not going to prove that those chemicals had nothing to do with the making of bombs. But it does not by any means follow that because they had two or three bombs there all that they had to do of the chemicals was for the purpose of making bombs. The probable theory is that they were teaching chemistry as well. In fact the quantity of chemicals as inferred from the number of bottles found in the garden, would not and could not be used for the purpose of making bombs. All these chemicals such as sulphuric acid are necessary for every laboratory and they are very common ingredients. The fact that only two or three bombs were found there goes to show that as a matter of fact they were making other use of the chemicals. It cannot be said that because there were two lectures of Ullashkar Dutt in the course of fifteen days, when this appellant was there, he knew the object for which the bombs were there.

Continuing Counsel said that there was nothing clear and convincing against this appellant. Counsel next referred to the exhibits. There was only one exhibit about which he would speak. That was exhibit No. 924. It was a letter written by Kristo Jiban. It ran thus : Having come home I have no peace of mind. Again there is on all side a cry of marriage. If you say I may leave these things and go. Please do not place me in this difficulty. Matters are going on here in a way, that if I hear anything more about this difficulty I would run away." The view which the Sessions Judge took of this letter was this : Kristo Jiban was trying to run away. Why should he run away unless he knew the danger ; Counsel submitted that the letter did not support the view which the Sessions Judge had taken. The letter was no evidence at all. It was an intercepted letter. No body proved the handwriting. There was another circumstance, the envelope which was shown as the envelope of this letter, but it was not its envelope because they found the Baidyanath post mark on it. This envelope was exhibit 925. Letters from Malda would not come from Baidyanath.

Carnduff, J : Where is the evidence of interception ?

Mr. Das : Witness Kishory Lal Das Gupta says that. It shows how these witnesses are prepared to swear anything.

Mr. Norton : I admit that. It was a mistake.

Continuing Mr. Das said that there was no evidence that the letter was written by Kristo Jiban and that it was addressed to Upen in the garden. Further there was no envelope found, which was of utmost importance to preserve.

Mr. Das next went on to deal with the case of Balkrishna Hari Kane. This man had been referred to as the Madrasi. Counsel would submit that no connection had been proved between this appellant and the garden.

Continuing Mr. Das said that there was not a single document in the garden which suggested Kane's connection with the garden. In fact there was not a single document anywhere—in any of the centres of the conspiracy—except a slip of paper which was discovered for the first time at the Sessions Court inside a book. It was exhibit No. 373-4-A. The evidence of the watch witnesses deal with three incidents—one of the 21st, one of the 23rd and one of the 27th April, when it was said he left Calcutta by the Bombay mail. Counsel would submit that all the evidence of the watch witnesses were an afterthought. The case against Balkrishna Hari Kane is this: Somebody in the Calcutta Police got hold of the name of Kane and enquiries were made at different places. The police got the names of two places in connection with Kane—one was Doolia, Bombay, and the other was Nagpur. Kane was a surname and it was after the man was arrested on suspicion at Nagpur and brought to Calcutta that the prosecution tried to connect him with this case by means of these three incidents.

Carnduff, J: Did not Barin give the full name of Kane?

Mr. Das: No. He only said Kane. The whole thing with regard to this appellant is a piece of fabrication.

Mr. Norton pointed out that statement regarding Kane was made by Barin in the shape of confession and that they were not allowed to refer to it.

Mr. Das: That statement was made before the police and we cannot refer to it as evidence. I do not know whether your Lordships can refer to it.

The Chief Justice: Certainly we can not. I only brought that in because of the observation made by Mr. Justice Carnduff.

Mr. Das then referred to the incidents and the evidence of the watch witnesses. He then said that the identification of this appellant was not worthy of credit.

Carnduff, J: He looked like a Madrasi.

Mr. Das: I shall show that he did not look like a Madrasi at all.

Mr. Norton: The reason for calling him a Madrasi was this that he spoke English very fluently.

The Court then rose for the day.

TWENTY-FIRST DAY'S PROCEEDINGS.

Mr. Das continuing his address said that when the Court rose on Tuesday he was dealing with the case of Balkrishna Hari Kane and

had shown to their Lordships that if they considered the circumstances they would find that on the day, the witnesses said they made their journey from Howrah to Nagpur, the journey was impossible. Counsel had pointed out that the prosecution did not take any steps at all till the 18th or rather the 19th May. This was extraordinary. Counsel had already submitted before their Lordships the evidence of Balai Ganguli, in which he said that he was deputed and he started from Calcutta on the 19th. Their Lordships would further find from Balai's evidence that Balai did not know who identified Kane for the purpose of arrest. It also appeared that at the enquiry at the Morris College Kane surrendered himself on the 20th July on which date he was arrested without any identification by anybody.

After dealing with the evidence as to the incidents of the 20th and 23rd, Counsel said that was the whole of the evidence as regards Balkrishna Hari Kane. Even if their Lordships accepted the evidence *in toto* there was nothing to show his connection with the garden. All that the evidence showed was that Balkrishna was traced to 15, Gopi Mohon Dutt's Lane on three occasions. The Sessions Judge in his judgment said that the case against Balkrishna depended on the oral evidence. The only document which referred to Balkrishna was a slip of paper found in a book which was one of the volumes of the International Library of Famous Literature. This was volume seventeen of that series. When found the slip of paper was loose and was not pinned on as now. The book bore the name of Probodh Chundra Bose, 40-1, Chalpatty Road. No one knew who this Probodh was. The Sessions Judge was of opinion that 40-1, Chalpatty Road, was the address given by Balkrishna where his letters were to be received and kept. It was clear that this book must have been borrowed from some one or picked up in some second-hand shop because it was only one of the twenty volumes of that series.

Mr. Das next took up the case of Hem Chunder Das. Their Lordships would find that the Sessions Judge, in dealing with Hem Chunder, began with the confession of Barindra and made that the foundation of the case as against Hem Chunder. Counsel's submission would be that the Sessions Judge did not consider the evidence as against Hem Chunder in the way it should have been considered, that is, first of all apart from the confession and if that was sufficient in law, then along with it. That made a great deal of difference as to the importance which one would attach to particular pieces of evidence if one began with the confession and considered the evidence independent of the confession first. With regard to the evidence against Hem Chunder, leaving out the confession, their Lordships would find there were certain documents with the initials "H. D." found at the garden, at 134 Harrison Road, and 15, Gopi Mohan

Dutt's Lane. There was nothing incriminating in either the letters or articles found at Hem Chunder's own house. The chemicals found in his house were materials for photography as the chemical examiner himself said and as the Sessions Judge also found.

Continuing Counsel said, Narendro Nath Mullick stated that either on the 24th or 25th, he saw Hem Chunder at the garden but he could not say when, or where, or whether he was alone or with others. That was the whole of the evidence with regard to Hem Chandra's connection with the garden.

As regards Hem's connection with 15, Gopi Mohan Dutt's Lane, Suresh Chunder Ghose pointed him out generally in his examination-in-chief and said he used to report daily to Purna Chandra Biswas whatever he saw. Later on Suresh said he knew Hem Chunder by name and sight on the 10th April. As a matter of fact, in none of Suresh's reports to Purna Biswas was Hem's name mentioned in connection with 15, Gopi Mohan Dutt's Lane.

Mr. Das next referred to the letter which Hem Chunder wrote to his wife and the suggestion of the prosecution was that he was making bombs in Europe. Counsel submitted that it only showed that he was suffering privations there. The Bengali word was "awful". There were three other letters which explained his difficulties in Europe—he was working there as a cooly.

Mr. Das next said that witness Deb Das Karan said that Hem went to France to learn photography. Inspector Sashi Bhusan Dey said, Hem was an amateur photographer before he went to England.

Mr. Das next referred to several photographs one of which was a group containing photographs of Hem, Satyendra Bose and his brothers. Counsel said this was not sufficient evidence in law to support the charges against him. If he were tried separately he could not have been convicted on this evidence. Hem protested against the joint trial but his petition was rejected.

Counsel then read that portion of the Sessions Judge's judgment which referred to the appellant Hem Chunder Das and went on explaining the incidents and exhibits referred to in the judgment.

Mr. Das next referred to the opinion of the assessors, both of whom found Hem Chandra Das guilty under section 122. Counsel submitted that they were influenced by the confession of Barin and others and did not draw an independent conclusion from the evidence alone. Counsel submitted that if the confessions were not taken into account, there was not sufficient evidence against Hem.

Mr. Das next submitted that Abinash, Sudhir and Sailendra were brought in to implicate Arabinda. The confession of Barin and Upen stood on a different footing from that of the other accused. In Ullaskar's confession, there was nothing to substantiate the charge under section 121. In Bibhuti's case there was not sufficient evidence of his complicity in the plot. Indra Bhusan was only for a short time in the garden. In Rhisikesh's case, the intention was not clear. Sishir was only for a day in the garden. Krishna Jiban ought to be acquitted on the very facts found by the Judge. In Nirapada's case his connection with the conspiracy was not clearly established. Birendra Nath Sen had nothing to do with any of the centres of conspiracy. As regards Susil, his connection was not clearly proved. Referring to Ullaskar, Mr. Das said, with regard to these bombs he was tried in the High Court and sentenced to seven years' rigorous imprisonment.

Mr. Chuckerverti then took up the case of Indra Nath Nandy, son of Lt. Col. Nandy. He resided at 37 College Street opposite the Medical College. It was the case for the prosecution that the College Street was always a crowded place and the room where the boy sat and did his work was on the street. He was arrested on 23rd June, 1908, in the course of a search conducted by Mr. Merriman who, in his evidence, said that he was not authorised to arrest any body. Nor was the search warrant produced and so the defence could not say who issued it. Indra Nath was taken to Mr. Birley on the 23rd and was remanded till the 9th July. On the 27th June a sanction was obtained from the Government for prosecution under sections 121A, 122, 123, 124. On the 9th July, a complaint was made by Inspector Biswas and Mr. Birley took cognizance of the case. Inspector Biswas however dissociated himself from any connection with the search or arrest of Indra Nath. He was only a nominal complainant. On 21st August, 1908, a further sanction was obtained authorising prosecution under sec. 121 and Biswas was again formally examined and Mr. Birley took cognizance of the case.

Counsel desired to place the materials before their Lordships first and then to discuss the legal points. As early as October, 1907, it was alleged that Inspector Soshi Bhusan De got information as to the existence of the secret society and Biswas got the information in January 1908. Some time in March 1908, a large number of police officers were asked to watch certain men and houses. This watch went on till the 1st of May. It might be taken that on account of the Muzaffarpur outrage, the police had to take up the matter in a hurry. Counsel then referred to the several searches at the garden and at 4, Raja's Lane, the findings of which were used against Indra Nath. There was nothing to show, Counsel said, what led to the search of Indra Nath's house. Nothing was suggested against Indra Nath until 23rd June and this fact

was in favour of the accused. None of the police witnesses saw Indra Nath either in the places of conspiracy or in the company of the accused under trial.

Continuing Mr. Chukerverti said that the prosecution attempted to prove the charge first with regard to Indra Nath's connection with Chatra Bhandar and through the *Yugantar* indirectly and thirdly on account of an injury in the hand. The prosecution alleged that the injury was due to an explosion of gunpowder. This allegation was supported by two nurses of the Medical College who said they heard the sound of an explosion at 37, College Street. One of them could not fix the date. It was said, the police received an anonymous letter in connection with the explosion and an enquiry was made, but that the inquiry was futile. The evidence of Dr. Jordan, who examined Indra Nath on the day of his arrest, was that the injury was due to an explosion of gunpowder. There was no microscopic examination of the marks on the person of the boy. From that the Crown desired to draw the inference that the injury was due to an explosion, that Indra was experimenting the preparation of cartridges, and that Indra Nath was the armourer of the garden. The Judge also accepted those theories. It was suggested that the accused was experimenting with gun powder in a house on a crowded street. Then there were certain letters between Indra and a man by name Taranath Roy Chowdhury. There was no evidence that the accused wrote those letters. Although many witnesses who were intimately known to the accused were examined, not a question was put to prove the handwriting of the writer of those letters. The Judge compared the writings of those letters with the signature of the accused in English and came to the conclusion that the letters were written by the accused although the letters were written in Bengalee and only the representation was in English.

Counsel had not concluded when the Court rose for the day.

TWENTY-SECOND DAY'S PROCEEDINGS.

Mr. Chakraverti continuing his address on behalf of Indra Nath Nandi said that the evidence against his client beyond what he stated to their Lordships on Wednesday consisted of certain documents found at searches made in the garden, 15 Gopi Mohan Dutt's Lane and one other place in Bhowanipur. The last item was evidence—if it was evidence at all—of Indra Nath's connection at Jamalpur when he was simply bound down under section 107 of the Criminal Procedure Code.

Counsel would take the search at the garden as the most important item of evidence to which he desired to draw their Lordships' attention. There were four documents produced which the Crown suggested showed Indra Nath's connection with the

garden. Those were exhibits 1425, 1427, 201, 231-2 and a page in 231-5. Three of those documents, 1425, 1427 and 231-5 were alleged to come out of item 84 or 86 in the search list, exhibit 213.

Taking 1425 and 1427 first, the only evidence that they were found in the garden was not the evidence of any of the persons connected with the search at the garden but was the evidence of Inspector Shamsul Alum who said they were taken out by him out of a very large number of books which were described as two hundred books.

So far as 1425 was concerned it was mentioned for the first time before Mr. Birley on the 11th September by Shamsul Alum. It did not bear the signature of the searching officer or the search witnesses and on the face of it there was nothing to connect it with the search at the garden except the statement of Shamsul Alum that he discovered it among those two hundred books. It was a very old book having been published in 1818. The title was "Wrinkles or Hints to Sportsmen and Travellers." The way in which this book was attempted to be connected with Indra Nandi was by the stamp on it "Dr. S. C. Nandi, I.M.S." It does not matter. Even assuming on account of the stamp that a book of 1818 belonged to Indra Nath's father the inference your Lordships are asked to draw—as the Sessions Judge was asked to draw—is that the only way the book could have found its way into the garden was through Indra Nath.

Continuing Counsel said he would not take up their Lordship's time by suggesting ways by which that book might have found its way into the garden. The argument was that because the book bore the stamp of Dr. Nandi, Indra Nath must have taken it and passed it on to somebody in the garden. An old book like that might have been stolen, might have been sold to hawkers, might have been given away or might have got into the hands of somebody from Dr. Nandi and then into the hands of somebody else.

Counsel continuing said that from slender evidence like that the inference was sought to be drawn that Indra Nath was connected with the conspiracy, that it could only have passed through Indra Nath's hands into the garden, and that therefore Indra Nath was connected with the garden.

The next book was 1427. It was a book in Bengali on "Magic." The first time it was produced was on the 11th September by Shamsul Alum. It did not bear the signature of any searching officer or any search witnesses and it entirely depends upon the testimony of the police officer.

Mr. Chukervarti continuing said that the documents he had referred to were the only documents produced for the purpose

of connecting Indra Nath with the garden. It was a curious fact that not one of the shadowing witnesses said any word about seeing Indra Nath in any place where the alleged conspiracy was going on. Voluminous correspondence had been produced but no correspondence of any kind had been produced as between the garden or any other place of conspiracy on the one hand and Indra Nath on the other hand.

Mr. Chukervarti then referred to exhibit 1074 and said that this was a letter without any envelope and it was dated 4th of Kartick without the year. It would be about the 20th of October. This was the document which the Sessions Judge used most against the appellant. Assuming that comparison of handwriting was allowable under section 73, with regard to this document there was no basis of comparison at all because they had nothing to compare with. The whole of the letter was written in Bengali, and it was signed as Indra.

Counsel then referred to several other letters and submitted that those documents were not legally proved.

Counsel then referred to Indra's connection with the *Chhatra Bhandar*. In the prospectus of the *Chhatrabhandar* Company there was an advertisement of the *Yugantar* on the cover. Indra was connected with the *Chhatrabhandar* as the Secretary for a certain period only. What was urged by the prosecution was that inasmuch as on the prospectus of the Company there was an advertisement of the *Yugantar* therefore the *Yugantar* which was remarkable for seditious writings, was the limb of the conspiracy; so was the *Chhatrabhandar* and as Indra happened to be the Secretary of the *Chhatrabhandar*, he was a conspirator too. There were thousands of shareholders but they were not arrested. The director and managing director were allowed to give evidence and the Secretary was arrested. At that time Government did not prosecute the *Yugantar* and there was nothing wrong in giving the advertisement.

The Court then rose for the day.

TWENTY-THIRD DAY'S PROCEEDINGS.

Mr. Chukervarti continuing his address said that on Thursday he was dealing with the question about the *Chhatrabhandar* being concerned with the conspiracy and in order to formulate matters, which were alleged for the purpose of establishing that proposition by the Crown, Counsel desired to place before their Lordships the summary of the grounds of suspicion. One of them was that there was a provision that thirty per cent. of the profits should be devoted to the benefit of the public. With

regard to this particular complaint he need not labour because the learned Judge had pointed out that in point of fact the limited Company, which came into existence after August 1906, took the place of another students' concern, which was known as the *Chhatrabhandar Stores*. This *Chhatrabhandar Stores* had a similar provision and apparently that provision was introduced for the purpose of attracting shareholders. That provision was in fact borrowed not only from the predecessor institution but also from other institutions. Until Mr. Chukervarti heard any question, raised on behalf of the Crown to discredit that finding of the Sessions Judge he was quite content to take his stand on that. With regard to the personnel of the directorate of the *Chhatrabhandar*, as compared to the personnel of the intended limited printing company by Nikhileswar the suggestion was, and that suggestion had been accepted by the Sessions Judge, that four persons concerned in the *Chhatrabhandar* also figured in the intended limited company for printing purposes; these four persons being Debabrata Bose, a man who had been acquitted, Nikhileswar Roy Moulick, who was also acquitted, Sarat Chandra Khan, who was a vakil of their Lordship's Court and Indra Nath Nandi. The case stood in this way. Nikhileswar took over the Sadhana Press sometime in September 1907 from Abinash. From exhibit 1309 it appears "the following persons shall conduct the business at present, Sarat Chandra Khan, Nikhileswar Roy Moulik, Indra Nath Nandi and Debabrata Bose." The document itself was in Bengali and the rules with regard to the intended company were on the back of a form of the Sadhana Press. This was found at Nikhileswar's house on the 29th August 1908 and the forms did not appear to have been used at all. From that fact therefore, the inference would be that the intended company never came into existence at all. They were however, not left in uncertainty with regard to it. From the evidence of Purna Chandra Lahiri it appeared that he never heard of or never came across any limited company of the name referred to there. There was also evidence of Pabitra on that point.

Mr. Norton : I will accept that.

Mr. Chukervarti : That relieves me. However, my submission is this. The limited Company remains only in project and never comes into existence at all; because it was proposed that four of the persons who were also concerned with the *Chhatrabhandar* in some capacity or other, had their names mentioned in the proposed company; and therefore that establishes what?—the relationship between the *Chhatrabhandar* on the one hand and the members of the limited company on the other. And because the limited company was to take the place of the Sadhana Press, therefore they must be taken to be connected with the Sadhana Press; and therefore because the *Yugantar* used to be published from the Sadhana Press, the *Yugantar* was also

connected. Is that the way to establish the conspiracy? *Jugantar* is a conspirator and *Chhatrabhandar* is, therefore, a conspirator in this particular line of reasoning.

Continuing Mr. Chuckervarti said that the Sessions Judge had referred to one matter and said that apparently this project of the limited company came into existence at or about the same time as the registration of the *Chhatrabhandar* in August 1906. The Sessions Judge was clearly in error with regard to that because it was not until September 1907 that Nihileswar had anything whatever to do with the Sadhana Press, when he took it over from Abinash. There was another matter and that was this. The prospectus which he showed to their Lordships on Thursday, did not show the place where it was printed. Exhibit 1252 did not bear on the face of it the place of printing. But in point of fact the articles of association which was exhibit 78 and which were registered on the 3rd August 1906 showed that the articles for *Chhatrabhandar Ltd.* were printed at the Kamala Printing Works by a man of the name of Bisveswar Prasanno Roy. He was called as a witness and he supported the fact that the memorandum and articles of association were printed at his place. In the middle of his examination-in-chief their Lordships would find the following note "Mr. Norton says his case is that the Kamala Press is a part of the conspiracy and perhaps the witness was also a member of it." This did not find favour with the Sessions Judge at all and he said it was extremely unfair to the witness. Mr. Chuckervarti then referred to the examination-in-chief of Pabitra, who was one of the directors of the *Chhatrabhandar* and who said: "I cannot say why the name of the press was not printed on it." The suggestion on behalf of the Crown was that although the articles of association showed that they were printed in the Kamala Press, that was untrue, they must have been printed at the *Jugantar* Press. This question was put in the examination-in-chief: "Can you swear that the prospectus was not printed at the *Jugantar* Press?" The answer was: "it was not."

The next question was the inference to be drawn from the language of the preface, which was written after the registration. Counsel then read the preface.

The Chief Justice: Is this the case that the Corporation is a member of the conspiracy?

Mr. Chuckervarti: Not exactly that but all concerned in the directorate and the management—the directors, the secretary and the auditors are all conspirators.

Mr. Norton: In consequence of the finding of the learned Judge I do not wish to revive that point of the argument. I am going to rely on it for the purpose of showing the connection between the persons whose names were printed on the prospectus of the *Chhatra-*

bhandar and the persons who were associated with the *Yugantar*. This *Chatrabhandar* was used for the purpose of distributing seditious documents.

The Chief Justice : Then your case is that it was an organisation innocent in its origin but afterwards it was used by the conspirators for this purpose ?

Mr. Norton : Yes.

The Chief Justice : It was a Council of Communication ?

Mr. Norton : Yes.

The Chief Justice : Was it used by the conspirators for the purpose of distributing their news ?

Mr. Norton : Yes, by reaching youngmen all over Bengal.

The Chief Justice : You mean by distributing seditious literature ?

Mr. Norton : Yes.

The Chief Justice : You associate those who managed the *Chatrabhandar* with the conspiracy ?

Mr. Norton : Some of them. I say my learned friend's client was put on there for the purpose of distributing sedition.

Mr. Chuckervarti then read the evidence of the various witnesses by which the prosecution sought to prove Indra Nath's connection with the *Chatrabhandar* and said, the suggestion was that Indra Nath was put on the Board of the *Chatrabhandar* by the conspirators to carry out the purposes of the conspiracy. There was absolutely no evidence, in fact the evidence was the other way—that the *Chatrabhandar* had branches in the country.

Turning to the connection as suggested by the prosecution, between the *Jugantar* and Indra Nath, Counsel said that there were eight searches of the *Jugantar* beginning from the 1st July 1907 and apparently ending on the 23rd July 1909, for a period of twelve months from time to time. A warning was given by the Government to the paper some time in June or July 1907 and searches took place at various places where the *Jugantar* office was, but nothing of an incriminating nature connecting Indra Nath with the *Jugantar* or connecting the *Chatrabhandar* with the *Jugantar* was produced in the course of the searches or anything connecting Indra Nath or the *Chhatrabhandar* with the *Sadhana Press* from which the *Jugantar* was published.

Their Lordships would find, continued Counsel, that but for the fact of these injuries the Sessions Judge's view of the evidence—evidence stronger even than the evidence adduced against Indra Nath—would have been the same as the view he took with regard to the cases of Provash Chandra De and two other accused. The

fact which operated in the mind of the Sessions Judge and which was pressed upon his attention was the inference to be drawn from the existence of these injuries on Indra Nath's hands and the marks on Indra Nath's person.

The story with regard to the injuries was that an explosion was heard at 37, College Street. It was alleged that the explosion took place about the 6th or 7th May between ten and eleven o'clock in the day. The evidence with regard to that was the evidence of two nurses of the Medical College Hospital and that of Colonel Jordan who examined Indra Nath on the 23rd June after his arrest.

Counsel then read the evidence of the nurse Burke and that of Col. Jordan. He next read the evidence with regard to the injuries and marks on Indra Nath.

The Chief Justice : Are any prescriptions forthcoming ?

Mr. Chuckervarti : No. With regard to that your Lordships will bear in mind that his father is a doctor.

The Chief Justice : Prescriptions of the chemists ?

Mr. Chuckervarti : There was none produced.

The Chief Justice : Was there any test applied for the purpose of showing conclusively whether it was gun powder or not ?

Mr. Chuckervarti : No. Microscopical examination will have conclusively proved that there were small particles of unconsumed carbon which stuck to the skin.

Carnduff, J : Is there any authority for that ?

Mr. Chuckervarti : I am much obliged to your Lordship. I will produce it.

Mr. Norton : Col. Jordan was not asked that question.

Mr. Chuckervarti : Our grievances are these : Where there is evidence, direct evidence, for the establishment of a crime there it becomes the question of credibility or not. But if a crime is to be established on circumstantial evidence, as it is admitted to have been done in this case my submission is that it is for the prosecution to establish that no other alternative is the reasonable probability. First take the injuries on the hands. Col. Jordan's evidence, so far as those injuries were concerned, is consistent with what was said on the occasion.

Mr. Chuckervarti : With regard to the position of injuries I will make one remark. Col. Jordan says that the *dhoti* would have protected Indra. If the injury was of such a character that the left hand was blown off and the right hand was injured, the *dhoti* would have been no protection at all. Your Lordships know what the nature of a *dhoti* is. It would afford hardly any protection.

The Chief Justice : What puzzles me is this. I do not know what happened ; whether it was gun powder ; whether it was burnt ; or what was the condition of the gunpowder ; or what was its position.

Mr. Chuckervarti : I don't know what is their case.

The Chief Justice : Would it be a bomb ?

Mr. Chuckervarti : If the bombs were exploded I don't think it would have only blown off the hand. The case for the prosecution is that so far as the bombs, which have been produced in this case, are concerned they are not made of gunpowder at all. They are made of picric acid or some other explosives like that.

The Chief Justice : Is there any evidence that gun powder if not enclosed in some fine space would cause that kind of explosion ?

Mr. Chuckervarti : No evidence on the record. We do not know what the theory of the prosecution is as to how this accident happened—with gunpowder or not. So far as the learned Judge is concerned it is difficult to say what the finding is as to the way in which the gunpowder was used or why it was used.

Referring to the case for the defence as to the existence of the marks on Indra's body, Mr. Chuckervarti said that the prosecution was not for the purpose of conviction. Their Lordships had held that repeatedly in 8 Calcutta 121, 10 Calcutta 140 and only the other day in connection with the case of *Jadu Lal*. Counsel submitted that it did not exonerate the prosecution to say that because Col. Nandi was Indra's father, it was not for the prosecution to call him. If the object was the ascertainment of truth it was incumbent on the prosecution to have called Col. Nandi. In addition to that there was the power in the Court. It was for the Court to say that Col. Nandi's evidence was necessary for the purpose of ascertaining the truth. The Judge disbelieved the evidence of Raghu Nath, Pabitra and Sarada with regard to the existence of the marks.

Continuing Mr. Chuckervarti said that according to the prosecution Indranath was the collector of arms and ammunitions. Could their Lordships conceive that on the 5th or 6th May the appellant after reading the accounts of sensational arrests in the garden and other places on the 2nd May, would sit down to make experiments in broad day light in a room, just in front of the Medical College ? The garden was then in the custody of the police and the men to whom they were to be supplied were in jail ; for whom would he do that ? Even assuming everything against the appellant they could not draw any inference from that at all.

After then dealing with the findings of the articles at 37, College Street, Counsel went on to deal with the Jamalpur incident. He said

that the judgment in that case should not have been used in this case.

The Court then rose for the day.

TWENTY-FOURTH DAY'S PROCEEDINGS.

Mr. Chuckerbarti continuing his address on behalf of Indra Nath Nandi said he had only a very few observations to make with regard to the judgment in the Jamalpur case. His submission was that that judgment was not admissible in evidence in support of the previous conviction and that was admitted. It was not admissible as a fact showing either the state of mind or intention of a person within the meaning of section 14 of the Evidence Act. He understood Mr. Norton to suggest that it was evidence under section 14 of the Evidence Act. In point of fact the judgment and conviction was not a "fact" within the meaning of the section as shewing the "intention" of Indra Nath. On the contrary it was an opinion formed by a tribunal on certain evidence. Nor was it evidence under section 15 of the same Act as showing whether any act was accidental or intentional. The class of cases covered by sections 14 and 15 of the Evidence Act was described by the learned author in paragraph 784. There the learned author referred to sections 14 and 15 and various illustrations under those sections. What was alleged was that Indra Nath and Sudhir were in company with two local men of Jamalpur and as there was an apprehension of a disturbance between the Hindus and Mahomedans being caused by these persons they were bound down under section 107 of the Criminal Procedure Code to keep the peace. Counsel could not understand how that could possibly be used as evidence for establishing the association with the offence of waging war against the King. That occurrence was in April, 1907. As regards this part of the case Counsel preferred to wait before making his submission until he had heard Mr. Norton as to how the latter proposed to establish a connection between Indra Nath being bound down to keep the peace in April 1907 and the offence of waging war against the King.

That, said Mr. Chuckerbarti, was the whole of the evidence affecting his client and he would now draw their Lordship's attention to Indra Nath's statements before the committing Magistrate and his statement in the Court of Session.

There was one point to which he desired to draw their Lordships' attention now. Even assuming that the search, the arrest and the sanction of the Government were all illegal, he was afraid he could not say that on that ground the trial was bad. But

he was going to make his submission from this point of view, namely that a Crown prosecution was a prosecution for the ends of justice, to bring a man to justice. If a man had broken the law he must take the punishment which the law awarded. On the other hand if he was an innocent man it was a grievous wrong that he should be convicted. Therefore if he could show their Lordships that the police were the masters of the situation, that they initiated the proceedings by breaches of the law and by breaking the formalities of the law devised for the purposes of the protection of the citizen and if it was shown that the object of the prosecution was not to bring offenders to justice but to run in A or B or C, then the prosecution could not complain if its conduct was criticised in this way.

In this connection Counsel read a passage from the charge to the Jury of Chief Justice Cockburn in the case of *Regina against Bolton* reported in 12 Coxe, page 87. Continuing Counsel said that he could not conceive, if the object of the prosecution was to run in the man at any cost, that the whole case should not have been first placed before Counsel and Solicitor for the Crown and that sanction to prosecute obtained in the regular way.

Mr. Chukerverty next referred briefly to the law points relating to the cognisance of the Magistrate and the legality of the Government sanction.

Counsel next referred to the case of *Regina against Harvey* reported in 11, Coxe, page 574. He also cited the case of *Foster v Finlayson* at page 490, but thought that would hardly assist their Lordships. He then read Best on Evidence, 10th edition, page 247.

The Chief Justice : There is a Government expert in handwriting.

Mr. Chukerverty : Yes.

The Chief Justice : Was he not called ?

Mr. Chukerverty : No. I think Mr. Das has submitted that there are traces on the record that some documents were sent to Government expert for the purpose of examination.

Mr. Norton then began his address on behalf of the Crown. He said he proposed to give their Lordships a short and condensed summary in the shape of a narrative of what the case for the Crown really was. Hitherto they had only been able to make up piecemeal from various documents and various isolated passages in judgment what the case for the Crown really was. He would try to make the narrative from the confessions as he wished how the narrative really corroborated, and was corroborated by confessions and by that method enhanced the value of the confessions.

In 1903 or 1904 Barindra Kumar Ghose, so far as the conspiracy was concerned, came down to Bengal from Baroda from the companionship of his brother Arabindo Ghosh. Now Arabindo had been acquitted and Mr. Norton was not going to make the faintest suggestion that Arabindo was guilty. But it was necessary to recollect for the purposes of certain documents which Counsel would have to place before their Lordships that there was the closest relationship of blood between Arabindo and Barindra in order that their Lordships might draw the inference which he would ask them to draw as to certain important documents which passed between the brothers.

Barindra came to Bengal and preached independence for two years. At the very earliest moment that he came into touch with Arabindra his mission—and Barindro made no secret of it—was independence, complete, final and decisive. After preaching this gospel of independence here for two years Barindra went back to Baroda and with his brother studied there for one year.

In the interval, continued Mr. Norton, certain important occurrences had taken place which it was important to remember. The first was the Partition of Bengal which took place on the 15th October 1905. Almost concurrent with that act the doctrine of *Swadeshi* had been introduced and became the fashion throughout the length and breadth of Bengal, and with it its attendant satellites of boy-cotting and picketing. He referred to that to show that although he could not prove any part of the *Swadeshi* movement, the boy-cott or the picketing were directly connected with the conspiracy yet in a manner they paved the way for what followed.

At any rate on Barindro's return to Bengal he found the field well manured for his purpose and that any seed sowed then would fructify and multiply.

On the 2nd November, 1908, the *Sandhya* newspaper, which was responsible for a good deal of evil, came into existence. The Editor of the *Sandhya* was a man named Brahmo Bandhab Upadhaya and he eventually died on the 17th October, 1907, while undergoing his trial for sedition. That was a period of activity and political re-crudescence and Mr. Kingsford was engaged in passing severe sentences—Mr. Norton would not say too severe—on certain journals in Bengal.

With a certain amount of skill and political foresight, remarked Mr. Norton, Barindro made use of the fact that it was among the student population of Bengal that the agitation had mostly found a home. Barindro availed himself of the material he found ready made to his hand in the shape of a very large number of young boys, inflammable to a degree to which his elder countrymen were not amenable. Barindra recognised therefore that to carry

his doctrines into precept he must turn not to the stable population of Bengal but to young boys, whose minds were more easily influenced through their hearts.

With considerable statesmanship Barindra recognised that the shortest and surest way to the hearts of the young men he intended to recruit from was to inculcate into them the principles of religion. Barindra evidently followed the principle that the sword struck more strongly from the hand the owner of which believed he was guided by divine inspiration.

Mr. Norton did not say that Barindra was a black traitor. Many of these young men might have been impelled to act as they did under the belief that what they were doing was for the good of the country.

Religion, however played a prominent part in this matter. That was clearly shown by the fact that the *Gita*, the *Upanishad* and other religious books were found in almost every search.

That the object, however, was not to send out a band of missionaries or religious workers was evidenced by the fact that with considerable strategy the Society was divided into three departments, namely, the mechanical, the intellectual and the spiritual. Over the spiritual department Upendra Nath Banerjee, of whom Counsel would say more later on, presided.

Counsel then referred to the pernicious influence exercised by the *Mukti Kone Pathe* and the *Jugantar* and said that he held Barindra responsible for the *Jugantar* the doctrine of which was "men, money, weapons." Those were the three factors without which no revolution could hope to be complete.

In February 1906, continued Mr. Norton, they found at Midnapur, which throughout this case played an extremely important role, that Khudiram, who himself played a very active part, was arrested with a seditious leaflet. A copy or duplicate of this seditious leaflet was found in the house of Bijoy Chandra Bhattacharjee, who had been acquitted. Bejoy attributed that as belonging to Chandra Kanta Chuckerbutty, one of the principal conspirators, who had absconded and for whose arrest a warrant had been issued. Khudiram was one of the two men who committed the Mozafferpore murder.

Mr. Norton there read the pamphlet which was headed. "The Partition of Bengal" and characterised it as an inflammatory appeal to the people.

What, asked Counsel, would be the probable effect of placing a document like this in the hands of the young men to whom it was addressed? One could scarcely be surprised at the result if this was the class of literature distributed throughout the country. The result was that it led to these unfortunate boys being placed

on their trial, convicted and sentenced for the offences with which they had been charged. This, in connection with the articles in the *Yugantar* and the *Sandhya*, as their Lordships would see, was the class of weapon which Barindra selected for his purpose.

Khudiram's death, said Mr. Norton, might be fairly attributed to the influence of Barindra.

Barindra had in the main debauched the youth of Bengal and it was possible for Khudiram—among others—to be inflated to such an extent of religious ecstasy that the murders of Mrs. and Miss Kennedy by mistake for Mr. Kingsford followed.

On the 15th of March 1906, said Mr. Norton, the first issue of the "*Yugantar*" came into existence. Barindra, himself selected the "*Yugantar*" as one of the direct weapons for the purpose of securing a revolution. It did not matter whether they were preparing for a far-off revolution or a revolution in the immediate future. The law made no such distinction.

The moment that two of these persons conspired to wage war the offence was complete even if no overt acts were committed.

TWENTY-FIFTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown said that when the court rose on Saturday he had brought their Lordships up to the 15th March, 1906, as being the date on which the first issue of the "*Yugantar*" appeared. In connection with that the registration of the "*Yugantar*" under the Press Act was on the 12th March. It was stated to have been printed at the Kamala Press at 36, Bonomali Sircar's Street. So regarding the details of the "*Yugantar*" he did not propose to trouble their Lordships at present, but he would have to deal with the object and motives of the "*Yugantar*" at greater length when he would come to its connection with the "*Mukti Kon Pathe*" which was merely a condensed emanation of the "*Yugantar*".

Historically it was worth while recollecting now that the Partition of Bengal in October, 1905, was not the commencement of this feeling of unrest and bitterness against the British Government. If the statement to which he had already alluded was true—and there was no reason to suppose it was not true—and if so far back as 1903, or 1904, Barindra Kumar Ghose had been perambulating the districts of Bengal, then it was quite clear that the unrest was attributable to causes which, according to those who were promulgating them, had arisen long prior to the date of the Partition.

It was impossible to deny that the Partition—and probably honestly—embittered and focussed the popular resentment, made it

a fresh starting point and converted it into a convenient handle to accentuate the feelings which came into being long before the date of the Partition itself.

Again with considerable skill from this point of view, the Partition was seized hold upon and was impressed into the general service of those who were embittered—or proposed to be embittered—against the English rule in this country and was used for the general purpose of inciting those feelings which had unfortunately resulted among other things, in this case.

With regard to the *Yugantar* he would ask their Lordships to note that it was the parent of "*Mukti Kon Pathe*" which was nothing but a condensed selection of some of the most virulent of the "*Yugantar*" articles, not merely collected together, not merely printed and disseminated among the student population but collected and issued with extraordinary and significant haste as was evident from the preface to the second edition.

The person responsible for that had failed to answer through his Counsel as to what was the necessity which prompted him to bring out this new edition in November, 1907, the first being in January of the same year, and the extraordinary haste in bringing out a fresh edition of the most virulent of the "*Yugantar*" articles.

As that stood unexplained it was not unfair to impute to that person and to those behind him—that person was the lieutenant of Barindra Kumar Ghose—that this extraordinary haste indicated in his eyes and in the eyes of his associates the importance to be attached to these "*Yugantar*" articles in disseminating their views. It was therefore necessary that those articles should be reproduced and spread broadcast so that their doctrines might be more readily accessible to the persons whose heart they were trying to influence. That their Lordships would see from the statement of a witness who is dead.

Continuing Mr. Norton said that witness was the father of one of the accused persons (Purna Sen) and he stated that the language of the "*Yugantar*" was grand. That was not the impassioned utterance of a boy but the mature deliberation of an old man.

Mr. Norton then called their Lordships' attention to the men who, he had evidence to show, were connected with the "*Yugantar*" They were Barindro, Abinash, Bhupendro Nath Dutt, one of the accused, absconding Sailendranath Bose, another accused, Taranath Roy Choudhury, an absconder against whom the case for the Crown was that he was one of the conspirators, Indra Nath Nandi, another accused, Sishir Kumar Ghose and Poresb Ghose who had absconded and who was one of the registered printers of the "*Yugantar*." When he would come to deal with the evidence he

would be able to satisfy their Lordships that under Section 10 of the Evidence Act there was reasonable ground for believing that these persons were guilty of conspiracy.

Counsel then went on to say that he would later on give their Lordships the language of the "*Yugantar*." If he could satisfy their Lordships that the "*Sandhya*" was intended from its very outset to be one of the leading instruments by which Barindra and his conspirators intended and decided to reach and affect the imagination of the population to whom they particularly addressed themselves, then he would ask their Lordships to hold that the language of the "*Yugantar*" was well calculated to achieve that object and that Barindro preached independence in its fullest and extreme length and coupled with its expressions of intense racial hatred which, whether they were true or not, must necessarily have had a most pernicious effect in the minds of those to whom they were addressed.

The keynote of those articles was not a form of Colonial Self-government but ultimate and absolute independence standing clear of any fetters political or otherwise. Continual reference was made to the out-raging of modesty of Indian women by British officials in this country and it was repeatedly declared that British officers had been violating temples. In fact there was an appeal to one's worst passions but not one single argument had been adduced to support the statement made. If that was one of the vehicles by which the revolution was to be achieved then no more appropriate language could have been used than was used in the "*Yugantar*," the "*Mukti Kon Pathe*" and the "*Sandhya*."

Mr. Norton then said that the next date in the history of his story was the 3rd August, 1906, when the Chatra Bhandar Limited Company was first registered. At its inception in 1903 the Chatra Bhandar was a purely honest mercantile venture and no exception could be taken to the reasons which led to the origination of that institution. However, as time went on the value of the Chatra Bhandar was appreciated as an organisation both in Calcutta and the mofussil and as a convenient vehicle for the dissemination of literature, those responsible for the "*Yugantar*" felt—and rightly from their point of view—that the Chatra Bhandar even if the experiment was undertaken without the consent of the persons who primarily started it as a *bona fide* commercial venture, would nevertheless in their hands be a suitable conduit pipe for reaching and exciting the minds of the juvenile population.

It was not a part of his argument to strive to show that the local Chatra Bhandar in 1905 started branch organisation elsewhere. They said they failed to establish branches and he accepted that statement. If however they succeeded it was so

much the worse for the prosecution. The failure of the local Chatra Bhandar to start branches elsewhere was more than made up by the fact that there had grown up a series of other Chatra Bhandars, especially at Midnapur, which became the local centre of sedition and revolution at which many of these men—Khudiram, Satyandra, Profulla and Nirmal—met and at which therefore there existed, what was essential for a conspiracy, namely, the opportunity for discussion, the opportunity for holding meetings, the opportunity for exchange of opinions and mutual information. It was that which the organisers of the "*Yugantar*" and the conspirators had set before them.

Mr. Norton next referred to the prospectus of the Chatra Bhandar, Limited, which professed to be the pioneer Swadeshi concern for the benefit of the youths of the country, and said that to those responsible for this conspiracy the youth of the conspirators was one of the main influences. That was an element which must be taken into consideration in estimating the guilt of the many young men who were accused before their Lordships. In so far as they were youths, as to that being an excuse, Mr. Norton said that if they were not youths they could not have been conspirators. It was because they were young and because the value of their youth was appreciated by those who were forming this conspiracy that they were seduced. The older men the conspirators felt—and felt rightly—were not amenable to these influences. Those who organised this conspiracy felt it would be useless to try and influence the older and stable population of Bengal because they were open and susceptible to rewards from the Government. But one could not purchase a boy with a C. I. E. Those who gave them assistance for this unfortunate catastrophe were mainly young. He could not help stating the fact that Mr. Beachcroft in his judgment had been influenced by the fact that many of the accused were young. The question of the youth of the addressees was steadily kept in view by those who were writing these inflammatory appeals. The language used was no doubt designedly used. The youth of the country were flooded with pernicious eloquence by those who were not and never would be before this court.

Mr. Norton then read the second issue of the prospectus of the Chatra Bhandar and said that as regards its language, both Mr. Das and Mr. Chuckerverti put forward the apology that a good deal of that was merely the sentimental imagination of the youth of the country who were addicted to practical imagery. That might be so. The question was whether this language was the mere use of forms to which they had been wedded from their birth, or was it used to convey a hidden and secret purpose. Reading it in connection with the rest of the documents in this case no other conclusion could be arrived at than that those who penned these words intended that the poverty of the nation should be used in

inciting sectarian hatred and revolt. If the Chhatra Bhandar was merely an honest mercantile venture, it would be perfectly useless against Indra Nath Nandi or any one else.

Counsel next referred to the advertisement of the "*Yugantar*" on the Chatra Bhandar prospectus and said, Mr. Chukerverti suggested that prospectuses as a rule needed binding. His (Mr. Norton's) experience was all the other way. His experience was that prospectuses came on printed forms which had no cover at all. This prospectus was enclosed in a cover for the express purpose of giving the "*Yugantar*" a valuable method of publication and advertisement. The "*Yugantar*" also offered to pay for the cost of the cover and to relieve the Chhatra Bhandar of any expense.

Their Lordships would not forget that one at least of those whose names appeared in the prospectus of the Chhatra Bhandar was associated with the "*Yugantar*". The Chatra Bhandar was associated with the "*Yugantar*". The Chhatra Bhandar was estimated at its true value as an engine of reaching persons outside Calcutta and for that purpose—by consultation and in concert—Indra Nath Nandi was selected as a fit and proper person to represent the conspirators on the Chatra Bhandar. Of course some of the persons whose name appeared on the Chhatra Bhandar might be absolutely respectable. The introduction of Indra Nath on that board was for that express purpose and it was not easy to suppose that his name had been put in there without his consent having been first obtained. Indra Nath was somewhat bolder than the rest of these boys, and his father was a man of position and was also a shareholder.

Referring to the advertisement of the "*Yugantar*" on the Chhatra Bhandar prospectus, Mr. Norton said, the advertisement was headed "National Freedom". He read the advertisement and said that was the view the "*Yugantar*" took. In the first issue of the Chatra Bhandar prospectus no mention was made of Indra Nath Nandi's name. That so far as the publication was concerned, it closed that portion of the year down to August.

Then there came an incident worth noting. In September, 1906, Hem Chandra Das went to France. Both Mr. Mitter in the lower court and Mr. Das here said, the visit was for the purpose of increasing Hem Chandra's knowledge either as a photographer, printer or jeweller. These were the three alternatives put forward.

Possibly Hem Chandra was a photographer and the chemicals found were necessary for that portion of his art. There was no evidence to show that he was a jeweller except that he had sent home some false rupees to his wife as a present. As regards painting there was absolutely no evidence.

Mr. Norton took it that Hem Chandra Das did not apparently go to France of his own accord. His departure in 1906 was in reference to the conspiracy which had been started at any time at least one year before that as evidenced from the institution of the "*Yugantar*." The Crown laid stress upon Hem Chandra Das as being of more than ordinary value in this case, first, because he was older than the rest, and secondly because he was a man of some means, having some property which brought him in Rs. 100 monthly. Allusion had been made by Counsel in this case to the letters written by Hem Chandra Das from Paris. That was in order to enlist their Lordships' sympathies. Hem Chandra's statement in the letters that while in Paris he was working like a cooly, was a mere *tour de force* because he had not parted with his wife on the best of terms. Like many other husbands who found themselves behindhand in correspondence with their wives, Hem Chandra wanted to show his wife that his delay in writing was due to his hard work. Judging from his photograph taken in England, Hem Chandra was dressed like anything but a cooly. He was dressed in tweeds and looked happy, robust and contented.

Mr. Norton then went on to say that on the 3rd May, 1907, Indra Nath Nandi and Sudhir went up to Jamalpure. There they were arrested, tried and bound down to keep the peace. That showed that these young men were conversant with arms prior to this charge and were engaged in operations which, Counsel submitted, were preparations for the later development in May 1908.

On the 20th May 1907, the *Navasakti* newspaper, continued Mr. Norton, was started. It played various important roles in the lower Court. In this case however it played this important role in that it brought Tara Nath Roy Chaudhury on to the scene again as well as Abinash and through Abinash, who was the right-hand man of Barindra Kumar Ghose, it brought in the whole conspiracy.

The case for the Crown with regard to the *Navasakti* was that, at a later stage, just before the arrest in May 1908 Abinash had printed a manifesto for, Counsel presumed, distribution throughout Bengal stating that the "*Navasakti*" which up to that time had not belonged to him but to other people, was going to be transferred and that the "*Navasakti*" was going to be placed in the hands of the staff of the "*Yugantar*." That prospectus, however, was never issued and that transfer never actually came into operation. That document was intended to issue on the 9th May and the conspirators were arrested on the 2nd May.

Mr. Norton asked their Lordships to take into consideration the discontent expressed in that notification by Abinash and

through him by Barindra and the whole of the conspirators. If that was done, the views of the "*Navasakti*" became of importance. Finding the newspaper ready to their hands, the conspirators availed themselves of it to express the views of the "*Yugantar*." These views were to be circulated through the two-fold medium of the "*Navasakti*" and the "*Yugantar*."

Continuing Mr. Norton said that in June, 1907, came the Government warning to the newspapers. Mr. Norton was not there to defend the Government but the action of the Government with regard to that and with regard to their failure to prosecute the "*Yugantar*" at the early stage had been characterised as semi-inducement to those young men to take the law into their own hands. It might possibly be that if the Government had been more active in their repressive measures the conspiracy might not have occurred. It was ungenerous to impute to the Government that they did not give any warning and that they refrained from taking any proceeding. It was ungenerous to attribute any unsympathetic attitude to the Government. As a matter of fact, that warning was given. They all know that Englishmen as a rule were averse to interference with the liberty of the press, and in this case they were blameable only for their kindness and generosity and for nothing else.

The Keshub Printing Works was started on the 15th June, 1907. In connection with this Press Keshab, Basudev and Srimanto were convicted. The *Sonar Bangla* (Golden Bengal) a book, was discovered at the time when this Press was searched. Counsel then read extracts from *Sonar Bangla* and said that there was a connection between the pen which wrote the "*Yugantar*" and the pen which wrote the *Sonar Bangla*—if they were not written by the same hand, there was no doubt that they were written under the same direction.

On the 1st July the "*Yugantar*" was first searched, and amongst other things found there were manuscripts and proofs of the *Bartaman Rananity* and the *Mookti-Kon-pathe*. Then followed a series of press prosecutions which continued till January 1908. On the 24th July, Bhupen was convicted. On the 26th Sailendra was convicted and sentenced to three months. On the same date, Bepin Chandra Pal was also convicted and sentenced to six months. On the 27th August, Susil got fifteen stripes. On the 28th of the same month, the *Sandhya* was prosecuted but the Editor died in the course of the trial. On the 7th September, Basanto was convicted and sentenced to two years' rigorous imprisonment. Then again one Apurba was convicted and sentenced to three months. In October 1907, the Police first got information of the existence of the Secret Society in Calcutta. Then came the Seal's Lodge, which was occupied by the conspira-

tors from October till the end of March 1908. Prokash Chandra Bose, Sudhir, Upendra Nath, Barindra Kumar Ghose, Profulla Chaki and Sailendra Nath Bose were connected with this house. No one knew who Prokash was but the case for the prosecution was that it was an assumed name. Exhibit 118, a letter which purported to have come from Prokash, was really in the handwriting of Barindra Kumar Ghose and it might be that it was an assumed name of Barindra.

On the 5th November, the first attempt was made at Chandernagore on the life of the Lieutenant-Governor. Ullaskar, Rishikesh, Naren Gossain, Barin and another boy were concerned in this attempt. Then some time before the 6th December, there was a second attempt, and Bibhuti and Profulla were concerned in it. Both these attempts were infructuous probably because the attempts were not scientific, Hem Chandra Das not having returned from France then. Then on the 3rd January there was that Naraingarh incident and Barin, Profulla and Bibhuti were concerned in it. On the 4th March 1908 a missionary gentleman named Higgenbotham was shot at Kustia. While on this point Counsel would draw their Lordships' attention to an exhibit which contained this curious entry "K. M. S." and under it "4-3-08." The case for the prosecution was that "K. M. S." meant "Kustia missionary shot" and under it was the date. Mr. Norton then referred to an anonymous letter which was sent to Durga Charan Biswas, a pleader of Kustia.

The Chief Justice: Was any of the incidents unknown to the public?

Mr. Norton: Oh no. The Chandernagar incident was unknown. The Kustia incident, the Naraingunge affair and the attempt on Mr. Allen were notorious.

Mr. Norton then went on to deal with the shadowing witnesses. In one portion of the judgment the Sessions Judge had remarked that the evidence of the shadowing witnesses was not creditable. Their evidence, however, was not dishonest. Considering the evidence of the witnesses, it appears that the Judge did injustice to the police in not accepting them as truthful witnesses. With the exception of two witnesses the evidence of the other witnesses were on the whole accurate. Counsel then referred to the opinion of the Assessors with regard to the shadowing witnesses and said that the Judge was the judge of fact and not the Assessors.

Mr. Norton then went on to deal with the shadowing witnesses giving the dates and the names of accused persons who were followed by the witnesses and the places where they were followed.

Continuing Mr. Norton said that the Muzafferpur incident took place on the 30th April and on the 2nd May there was a raid in Calcutta and some of the appellants were arrested.

Mr. Norton then went on to deal with the findings. He first dealt with the garden. The persons who were connected with the garden were Barin, Indubhusan Roy, Ullaskar, Upendra Banerjee, Sudhir, Paresh, Bibhuti, Hem, Sishir, Krishnajibhan, Rishikesh, Susil, Nirmal, Indra Nath, Bhababhusan and Birendra Chandra Sen. The value of the things found there would be about Rs 5,000. Where would they get money from? They were not persons of means. From the fact that various plans were found there the prosecution would say that the appellants were intending to attack houses etc. for the purpose of collecting money. There was no direct evidence of any such attack. Mr. Norton then dealt with the various things found in the garden. Directly connected with the garden were the Seal's Lodge and 15 Gopi Mohan Dutt's Lane. No. 15 brought them in direct touch with 134, Harrison Road and Shibpur because Ullaskar went there from 134, Harrison Road. Then came 30 Harrison Road. Counsel next dealt with the Sylhet search and the search at 23, Scott's Lane. The next important searches were at the "*Yugantar*" office, 4 Raja's Lane, 10-8, Rani Sankari's Lane, and Deoghar. After dealing with the findings of those places, Counsel submitted that coupling up all those things together it was impossible to come to any other conclusion than that those things were accumulated for the furtherance of a common design which could not be suggested to be benevolent or legal one. From those facts it was clear that the case for the prosecution had established positively a clear case which required an answer from the defence and they had not chosen to answer the charges, nor had they shaken the Crown case. That led almost conclusively to the suggestion of guilt.

Mr. Norton then went on to deal with the seditious literature in the shape of the *Yugantar*, *Mookti Kon Pathe* and *Bartaman Rananiti*, and had not concluded reading extracts therefrom when the Court rose for the day.

TWENTY-SIXTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown said—One of the main instruments so far as the literary portion of the conspiracy was concerned was the "*Yugantar*." Counsel proposed to read passages from every issue of the "*Yugantar*" which was put in by the prosecution. Those passages would show what was really the object at which these people aimed.

These articles might shortly be summarised as follows:—It was impossible to read the columns of the "*Yugantar*" without coming to the conclusion that it was a call to arms and a call to preparation, and that in both cases it was an ultimate call to achieve the complete independence of the country.

That call was based partly upon the financial ruin which, it was stated, English rule had brought to India. It contemplated the apparent drain of money which the English were taking away from this country either by way of pension or compensation. That money, according to the articles ought to be kept in this country and the taking away of it was causing economic ruin to India.

It was also based partly on famine and its terrible results which were attributable to the reforms and wicked action of the Government of this country, whether the persons who gave vent to these articles believed them to be true mattered little. The effect upon those who read these articles was what Counsel wished to touch upon.

It was also based partly upon the alleged oppression of the Judicial and Executive Departments, officered by the English. It was a pure matter of chance that Mr. Kingsford was the particular embodiment in their view of judicial and magisterial transgression. The attempt made upon Mr. Kingsford's life was a pure accident as he happened to be the magistrate who had to deal with the long list of prosecutions for sedition which occurred in the latter half of the year 1907. It might be, the fact that Mr. Kingsford felt it his duty to do what he did invested the conspirators with a particular reason for selecting him as the first person to be attacked. Counsel's suggestion after he had read these articles would be that had it not been Mr. Kingsford, it would have been somebody else. He wished as strongly as he could to controvert the suggestion made for the defence—and which apparently found some favour with Mr. Beachcroft—that the attempt upon Mr. Kingsford's life might be reduced from an attempt in the nature of war to mere private grievances against one particular individual. Throughout, these articles were clothed and garbed in the language of fervent poetry, the language used being extremely fine. It came from an educated man and was written with considerable force and vigour and, he was bound to say, in certain instances with a considerable amount of logic.

Counsel then went on to say that connected with the *Yugantar* in a way but not in the sense of being direct instruments in the hands of the conspirators, were two other newspapers.

The first was the "*Sandhya*," an older newspaper, which came into existence in 1905, but which Counsel did not say was brought into existence—because there was no evidence to that effect—to serve the ends of the conspirators. But whether or not it was the outcome of some of the early teachings of Barindra Kumar Ghose during his perambulations in the province of Bengal, this was quite clear that it enunciated its doctrines in language far inferior to the "*Yugantar*" but appealed more brutally than the "*Yugantar*" to the more uncultured portion of its readers. That it was read

by many people and was regarded with a certain amount of affection and esteem was apparent from the correspondence which Counsel would read later.

Connected with the "*Yugantar*" itself was the "*Mukti Kon Patho*" which Mr. Norton charged with being part and parcel of the conspiracy. It consisted in the main of articles translated bodily from the columns of the "*Yugantar*" and its popularity is shown from the several editions to which it ran.

Then there was the "*Navasakti*" newspaper whose principal home was at 48 Grey Street. It had been there anterior to the 30th April on which date by common consent Arobinda, Abinash and Sailendra removed there from 23, Scott's Lane. It was much more guarded in its language than the '*Sandhya*'. Counsel referred to it for two reasons, first by reason of its contents, and second, that bad as it was it was not considered sufficiently bad by Abinash. In April 1908 Abinash issued a prospectus in which he disclosed his intention of converting "*Navasakti*" into a weekly paper and with it coupled the promise—which no doubt was the bait to those he was addressing—that it would henceforth be run by the same staff which had formerly run the '*Yugantar*.'

Counsel then read the articles in question commenting as he went along.

After reading the whole of the articles which appeared in the *Yugantar* Counsel said that taking as a whole those articles were undoubtedly impassioned and their language was magnificent. From these articles it appeared that from the very start Barin intended to preach doctrines, which had the ultimate aim of achieving a complete and unfettered independence and for the attainment of that purpose two things were necessary, viz. (1) a band of youngmen and (2) a band of youngmen to be instilled with deep religious sentiments. The "*Yugantar*" was used as an instrument to preach those doctrines to the youngmen.

The Court then rose for the day.

TWENTY-SEVENTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address said that on Tuesday he dealt finally with regard to "*Yugantar*". Counsel had placed extracts from all the issues available to the Crown for the purpose of enabling their Lordships to see the general tenor of those articles and he had shown to their Lordships that the objects of those who ran the "*Yugantar*" was really to stir up revolution and to stir it up in the guise of appeal to patriotism which was based upon absolutely untrue representations about the financial draining of the country, violation of female modesty and temples, etc.

Although the case for the Crown was that the appeal for financially helping the revolution, which was contemplated by the "*Yugantar*," was in the main confined to the youths of the country, Counsel said, as a matter of fact, the "*Yugantar*" did not confine its attention to procure the means of warfare from the youths alone. Another method was adopted to attract the older population and that was only for financial help. While dealing with this question, Counsel drew their Lordships' attention to the valuable finds at 134, Harrison Road. The reasonable deduction from that would be that the money must have come from somewhere.

The question was where could they get the money? Was any one of them able to pay that? There was not a single person amongst them who could afford to pay except Barin and Arabinda. But so far as Barin and Arabinda were concerned, the evidence was that they had the ancestral debts and attempts had been made in 1906 or 1907 to get rid of the garden for the purpose of devoting its proceeds to pay back the debts. The pecuniary help therefore was not likely to come from them. The money must have come from sources which, so far as the case was concerned, were not disclosed. The result of an appeal like that made through the columns of the "*Yugantar*" was likely to have its effect. They appealed to the very worst part of human nature with the result that the persons who believed that there was a real substance for complaint came forward.

Referring to the Partition of Bengal, Mr. Norton said it was unquestionably one of the land marks in the history of this revolution. Counsel was not there to express the faintest praise or dispraise with regard to that question. He was only there to say what was the effect of it upon the minds of the people, apart from the question whether it was right or wrong, wise or unwise, necessary or unnecessary. The partition was used as an instrument of appeal. The effect of the partition was the severance of two people who, rightly or wrongly, honestly or dishonestly, claimed to have a common bond of union between themselves. There were some people who believed that it was a wholly unnecessary action on the part of the Government and that it was intentionally cruel. Taking advantage of this, the people who were conducting the "*Yugantar*," used the wonderful power of their pen. As the engine of appeal was in their own hands they misrepresented the acts of the Government in order to attain their own end. From that point of view they could understand why it was that the 16th October had always been regarded as the day of humiliation and prayer. Historically speaking—if the confessions were true—the unrest began two years before the Partition of Bengal. The effect of the partition was the crystallisation of the germs of revolution which had been thrown broad cast,

Mr. Norton then read various articles which appeared in the *Sandhya* newspaper.

Mr. Norton then wanted to read articles from the "*Navasakti*" which, he said, was far superior in phraseology. Although it was not one of the limbs of the conspiracy, it was used as a means for the spread of their cult by the conspirators.

The Chief Justice : How can you connect it with the conspiracy if it is not a limb of it ?

Mr. Norton.—At the search of 48, Grey Street an account book was found which showed that Taranath Roy Chowdhury was on the staff of the "*Navasakti*" and used to get Rs. 20 a month.

The Chief Justice : Is it profitable to read the articles if there is no clear evidence of the connection of the paper with the conspiracy ?

Mr. Norton in reply said that Taranath left "*Yugantar*" and went to "*Navasakti*." He was helping the latter paper in the same way as Abinash was helping the "*Yugantar*." There was evidence to show that the "*Navasakti*" was used as a newspaper on which the conspirators had some control. The proprietor of the paper was Babu Monoranjan Guha, a man of wealth and position, and that was the reason for the comparatively moderate tone of the paper. It was known that Mr. Guha would not allow his paper to be used in the same way as the "*Yugantar*". Abinash issued a notice that the "*Navasakti*" would be converted into a weekly paper and from the 9th of May, it would take a new lease of life—it would be edited and managed by the *Yugantar* staff. In other words he intended to change it to keep the tune of the "*Yugantar*". Both these papers had the same common aim.

Mr. Norton then read extracts from some of the articles from the "*Navasakti*" and then proposed to read the whole of the book called the "*Bhowani-Mandir*."

After reading the whole book Mr. Norton observed that there was no doubt that it was a fine piece of writing, and Counsel believed it was written by Arabinda Ghose for there was no native of India except Arabinda who could write such excellent English and who could put Vedantic thoughts and ideals in such form. Counsel was prepared to concede and believed it to be so that the idea of the writer was perfectly honest—the spiritual regeneration of India and for that matter the whole world. What he objected to was the method used for attaining that. The writer had in contemplation not only the spiritual welfare but material wealth. Counsel did not suggest that it was written for the garden, but at the same time he must say that the men in the garden used the idea for purposes for which it should never have been used.

Mr. Norton next read extracts from a book called the "*Bartaman Bananati*" (Modern Warfare). Counsel observed it was a remarkable book dabbling with the military knowledge of more European nations than one.

Counsel had not concluded reading this exhibit when the Court rose.

TWENTY-EIGHTH DAY'S PROCEEDINGS.

Mr. Norton after dealing at length with the various plans put in by the prosecution said he would deal with the police evidence as a whole in this case, what they did and what the Sessions Judge found with regard to them. This was important to the Crown, because Counsel was going to rely on the evidence of shadowing witnesses. He maintained that the police evidence in this case was honest and trustworthy, and it would be unfair to them as well as to the Crown to abandon what he believed to be evidence on which one might safely place reliance. The police were open to the class of attacks made upon them. With regard to the identification of Barindra Kumar Ghose and Sishir Kumar Ghose in April, the record showed that their identification by the police was a mistake, but Mr. Beachcroft held that it was an honest mistake.

Continuing Mr. Norton said that there was a general attack on the conduct of the police with regard to the documents as a whole. All that was said was that some exhibits were mixed up and therefore their evidence ought to have been rejected.

Continuing Mr. Norton said that there was no dishonesty on the part of the police. With regard to the 17 men, who were acquitted there was not a single instance, where the Sessions Judge remarked that he did not believe the police witnesses.

Counsel would next deal with the remarks made by Mr. Das regarding the shadowing witnesses.

The Chief Justice: Mr. Das said, if I am not misrepresenting him, that the police never knew anything at all about this affair until after the confession and then they constructed their evidence as to watching on the basis of the confession. There was some slight qualification to that, I think in one instance, but generally that was the argument.

Mr. Norton: How came the police to raid 134 Harrison Road? That must have been in consequence of some knowledge of some sort. What about 15, Gopi Mohan Dutt's Lane? There was not a word about it in the confession. How come they to ask for a search warrant.

The Chief Justice: So far as the searches go, the confessions could have been no guide, because the searches precede confessions in order of time. I suppose what was suggested is this that there was an information on which the places were selected for the search but the substantial story was not learnt until the confessions were made. That was the theory.

Mr. Norton: It is now suggested. It is a new argument. It comes to this that there was information which enabled us to know certain places. In the first place that would account in some measures for the view that the informer gave the information. But the view that the case was afterwards falsely worked up in consequence of the information given by the confessions cannot be applied truthfully with regard to the Seal's Lodge.

With regard to the question that the police had no power to arrest, Counsel would refer their Lordships to Section 44 of the Criminal Procedure Code. Under that section it was obvious that the police had the power.

With regard to the question as to the admissibility of the confessions, Mr. Norton proposed to argue on two grounds. That rested partly upon facts and partly upon the question of law. As to facts, Mr. Birley was acting under Section 164 of the Criminal Procedure Code and therefore the confessions were at once admissible under that section. The Crown had conclusively proved that before Mr. Thornhill there was no case. All that he was asked to do was to issue a search warrant. In fact, he did issue the warrant legally under Section 96 of the Code. What were the facts before Mr. Thornhill? They contained in the statement reduced to writing by the complainant Purna Chandra Biswas, which showed that Mr. Thornhill was acting in the investigation of a case over which he had no jurisdiction. Thereafter on the 2nd May all the raids were made and the occupants of each respective house was arrested. That was the state of things when these persons were arrested on the 2nd May. They were then taken to the Commissioner of Police who kept them in police custody.

The Court then rose for the day.

TWENTY-NINTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown said that on Thursday he was seeking to show that Mr. Birley in recording the confessions, which he did on the 4th May was competent under the law to record them under Section 164 inasmuch as the law enabled him so to do, because at that time it was impossible, that he could take cognizance of the offences for which these men were being tried.

Mr. Norton then went on to say that his argument was that Mr. Birley was well within his rights when he acted under section 164. He based his argument on the fact that Mr. Thornhill merely acted as a conduit pipe in issuing search warrants in respect of investigations started up-country of which there was a complaint in the hand writing of Mr. Thornhill himself on the back of the application put in by Inspector Purna Chandra Biswas. Therefore Mr. Thornhill was not in seisin of the case and hence there was no question of a transfer from Mr. Thornhill to Mr. Birley. The right of Mr. Birley to act as he did would depend upon the question as to how this case came before him. It was quite clear Mr. Birley got knowledge of it on the 2nd or 3rd, came to Calcutta, made certain enquiries and decided to try the case himself. Counsel thought the Magistrate was wrong when he said he treated the order of the 3rd May as an order of transfer. Strictly speaking that could not be so. The Sealdah Magistrate had never taken cognisance of the case and could not transfer a case which was not on the record. What Mr. Birley evidently meant was that the Sealdah Magistrate was not going to enquire into the matter. If Mr. Birley took cognisance of the case he did so under section 190 clause (c) of his own motion because there was no complaint and no police record. Mr. Birley could not take cognisance of the offences under chapter VI. The defence could not plead any misfeasance on the part of Mr. Birley in taking cognisance under section 190 clause (c). Therefore there was no substance in the complaint—should it be raised—that the accused were in any way prejudiced. All that could have been done Mr. Birley did, namely, to commit. What did Mr. Birley do? On the 3rd he made up his mind that he was going to enquire into this under chapter VI. On the 4th a certain number of men were produced before Mr. Birley by the police and he was asked to record their confessions. Mr. Birley did so. If under the law he could not take cognisance of the offences under chapter VI yet on the morning of the 4th he had taken cognisance of the offences which the law permitted him to take cognisance of. The only thing left for him was to take cognisance of the offences alleged under the Arms Act or unlawful assembly, both of which offences were cognisable. If Mr. Norton was right in his view that section 164 applied in its entirety, then these confessions were probably recorded and were worth what they were against each of the confessing persons, while under section 30 of the Evidence Act they were evidence against each of the persons they professed to incriminate.

Assuming, however that section 164 did not apply, Mr. Norton said he had been through innumerable cases with the result that he had not been able to find a single decision from 1883 in which this argument seemed to have been either advanced or to have received

any attention, namely, that section 164 was an enabling and not a disabling section. The confusion seemed to have arisen on the introduction of, and the interpretation placed on the words "to be forwarded" that had permeated most of the decisions with regard to the later Act, section 122 of Act X of 1872—the old Act—was a very different section from 164 of the present Act. Presumably, however, Counsel could not see any difference between the opening language of the two sections, but of course there was a great difference in the rest of the language. The last paragraph of section 346 of the Act X of 1872 in some measure tallied with section 533 of the later Acts of 1885 and 1898. Counsel then read section 122 and 346 and said the examination under section 346 meant the procedure under section 122.

Mr. Norton :—I am going to argue presently when I come to deal with the sections of the present Code that section 346 which says "whenever an examination is made" includes the right and power of the Magistrate to examine an accused and if in the course of the examination a confession is made—assuming it is voluntary—then section 364 justifies it and it can be received under section 164. It has been held over and over again that under section 122 of the Act of 1872 if a Magistrate, who is not an inquiring Magistrate, takes a confessional statement under section 122 that is not to be treated as confession under section 122 or section 164, but is to be taken in that case as the foundation of the enquiry and is either taken under section 342—which I cannot understand—or under section 364 which I can. Counsel then referred to the Full Bench decision in 5 Calcutta.

The Chief Justice.—That full Bench case was a decision simply for the purpose of getting the confession in.

Mr. Norton :—Why did they introduce that extraordinary Section 342 ?

The Chief Justice :—They were perfectly entitled to do it at that time because of the words in the Act of 1872 for the purpose of explaining anything against him in the evidence. Did it not appear in Sec. 342 of 1872.

Mr. Norton :—Not in that section.

The Chief Justice :—That is the sole reason why they adopted it at that time in 5 Calcutta.

Mr. Norton :—But the old Act has also got the Section 193. *Vide* 346 of Act X of 1872.

The Chief Justice :—Section 193 has not got the words for the purpose of explaining anything against him in the evidence.

Mr. Norton :—No.

The Chief Justice:—The case in 5 Calcutta would be impossible now-a-days.

Mr. Norton:—Except with reference to Section 342.

The Chief Justice:—I think it impossible under any circumstances.

Mr. Norton:—Section 342 of the present code was obviously inserted for the purpose of explanation.

The Chief Justice:—The difficulty met by 5 Calcutta is simply this. It rests on the expression of opinion, which may or may not be a part of the judgment, to the effect that the Magistrate, inasmuch as he had jurisdiction to inquire, could not act under section 122. That is the whole difficulty in that case.

Mr. Norton:—Yes, then the learned Judges met that by these two other sections.

The Chief Justice:—Quite true, one has to look at the dramatic incidents in that case. In 5 Calcutta it was clear a murder had been committed but the accused could not be convicted unless the confession was brought in. The Court then said “we don’t bring in the confession under Section 122, but under Section 193” which is equivalent to the present Section 342 without the words “for the purpose of explaining.”

Mr. Norton:—Yes, I submit that would not be sound law now under s. 364, Act V of 1898.

The Chief Justice: They could not have got it under section 342 or its equivalent now. The difficulty in that case really consisted in a statement by the Court that the Magistrate had a jurisdiction to record a confession. I am afraid we must recognise the weight of judicial authority.

Mr. Norton: There is nothing to show that argument was ever advanced. With regard to the last paragraph of section 122 it has been held that confessions recorded under section 122 or which ought not to be recorded cannot be recorded under section 122 because the language of that section might either be receivable under section 193 of the old Code or what is much more important in my view under section 346.

The Chief Justice: You treat one word as immaterial in Section 164. You treat the word “every” distinguished from “any” as immaterial. I am not sure whether you are not giving away a good argument in your case by doing that.

Mr. Norton: I cannot say the word “any” can be fairly or logically restricted to a particular class. It is impossible to read that without looking into the fact that a Magistrate who has jurisdiction has also power to record a confession.

Counsel then referred to section 523 of the present Code where they found an enlargement of powers of a material character which the legislature intended to give under the new Act with more plenary powers of curing defects of all sorts as regards the recording of confessions under section 164 or any other section.

The Chief Justice: I am not sure whether section 533 has much to do with our present difficulty. There is no question that all the formalities here have been observed. The only difficulty in that case is that the case had passed into a stage where section 164 was not applicable. Mr. Birley was absolutely correct in the observance of the formalities.

Mr. Norton: Then this section steps in and says that a statement properly to be recorded under section 164 may yet be received.

The Chief Justice: It says you may give evidence to get over formal informalities.

Mr. Norton: That is with regard to confessions purporting to be taken but which have not been duly taken.

Mr. Norton then submitted that Mr. Birley was quite right in acting as he did and that the confessions were admissible under section 164. Counsel read the evidence of Mr. Birley on this point and submitted the prosecution had proved that these confessions were admissible.

In support of his contention Mr. Norton cited cases reported in 5 Calcutta, 954; 15 Calcutta, 595; 36 Calcutta, 281; 21 Bombay 495, 23 Bombay, 221 and 3 Calcutta Weekly Notes, 387.

Mr. Norton then said that he would next deal with individual cases, and he would take up the case against Barindra Kumar Ghose first, leaving, so far as he could, the confession to the end. Barin was one of the co-sharers of the Mooraripukur garden. So far back as the 20th January, 1908, Inspector Biswas was informed of the existence of the Secret Society.

Mr. Norton then mentioned the names of the various places where Barindra was seen by the shadowing witnesses and others. Continuing Counsel said that Barin was arrested on the 2nd May, and he pointed out various places at the garden. The evidence with regard to the pointing out of those things was not confined alone to police testimony, which was perfectly honest, but Major Black was also present there. On the 3rd Barin wrote out a statement of some sort to the police and it was written voluntarily and freely. On the 4th May Barin gave Kane's name to the police.

Before going into the documents Counsel wanted to give their Lordships the list of places which connected Barin and they were: Naraingarh, Deoghur, and Hossindanga. He was also

present at 176-3, Bowbazar Street, when Bhupendra Nath Dutt was arrested. Barin was connected with certain money-orders which threw a flood of light in the case and the next thing was that he was connected with Muzaffarpur. Then there were plans of Maldah, which contained the handwriting of Barindra and so far as he was concerned his handwriting was proved. Barin was also connected with Profulla Chandra Chaki and Khudiram Bose, who committed the Muzaffarpur outrage. In his confession Barin stated that he selected Profulla to go to Muzaffarpur while Khudiram was selected by Hem Chandra Das.

Counsel then went on mentioning the names of the exhibits which were found in the garden at the search of the 2nd May and had not concluded when the Court rose for the day.

THIRTIETH DAY'S PROCEEDINGS.

Mr. Norton continuing his address said that amongst other things there was found a note-book containing some items of expenditure under the heading of "marriage expenditure." Counsel submitted that "marriage expenditure" referred to bomb making.

The Chief Justice: I think this is the book as to which criticism was made that it was not discovered until the third search?

Mr. Norton: My explanation is this. The object which the police had in their mind was to discover materials in connection with the bombs, arms and ammunitions and so on. It did not occur to them that these books were of any value until they got instructions from their superior officers. They then went back and found these books. As regards the suggestion of forgery and importation of records my submission is that the books themselves were the evidence. There was a variety of details in the book, and, I suggest, it was absolutely impossible for the police to know them. The police were not intimately connected with the names and addresses of the persons who were in Bombay. It is absolutely impossible that anybody excepting the persons, to whom they are attributed should have written their contents. It is absolutely absurd to suggest that the police had knowledge of the addresses of these persons.

Mr. Norton then referred to a letter containing the name of Ram Chandra Probhu. Counsel said that this Ram Chandra was a conspirator.

Continuing Mr. Norton said that there was a note book which contained the word "Kalke," which is placed on hubble bubble for keeping fire. The word "Kalke" referred to cartridges.

Counsel then read several other exhibits.

The Court then rose for the day.

THIRTY-FIRST DAY'S PROCEEDINGS.

Mr. Norton after referring to several other exhibits referred to exhibit 295. It was a letter signed by Barindra Kumar Ghose to Arobinda and was written from Surat, "Bengal Camp, near Ajit's." It runs thus: "We must have sweets all over India ready made for emergency." This letter proves that Arobinda and Barin were in closest terms and in political propaganda they were at one. There was sufficient evidence that during the Surat Conference Arobinda was there, and that there was a fierce attack by the extremists on the moderates. At that Conference Dr. Rash Behary Ghose was practically driven out of the camp and the extremists achieved their triumph. The question was whether they could take it that Barindra was at Surat in the absence of any evidence. The letter itself would give answer to that question. Arobinda stated that the letter was never found in his house, but the Sessions Judge held that it was found at 48, Grey Street. Although Barin had withdrawn his confessional statement there was no suggestion that his statement was not true. With regard to this item, he had never stated that this was not his letter or that he had not written it.

Mr. Bonerjee: I appeared for Barin in the lower Court and in the course of my address I most emphatically denied this letter and described this as forgery.

Mr. Norton: I did not say what the learned Counsel said. Barin never said it and there is no statement upon the record. I emphasise that Barin's confession was true. Barin never said that it was not true. He never denied the document. Barin was a man of great resolution and a person with considerable amount of moral force.

The Chief Justice: On the point as to whether it was written by Barin did the Sessions Judge and the Assessors come to the same conclusion?

Mr. Norton: No. They disagreed.

Counsel then read the opinions of the Assessors as well as the judgment of the Sessions Judge relating to this point. In conclusion he submitted that the evidence was conclusive that the letter was not a forgery.

The Chief Justice: What strikes me is this: It seems you have a fairly strong case against Barin, you are now giving us the impression that we will have to rely upon this letter and disbelieve the opinion of the Assessors and the Sessions Judge on the point.

Mr. Norton: Is it not a strong point?

The Chief Justice: If your case against Barin rests upon this letter I can understand your argument. If it is merely for the purpose of showing that the Judge and the Assessors were wrong in their view as to Arobinda then you are in mistake.

Mr. Norton: The value that I attach to this latter is solely this: I say it is an additional circumstance in corroboration of Barin's confession.

After dealing with several other exhibits which connected Barin, Counsel said that he would deal with the confession. The confession was not intended to include any persons excepting those who were under arrest with him in the garden. So far as the confession went it was a truthful confession. Barin never intended to incriminate anybody excepting those who were co-accused with him. Counsel then read the confession of Barindra Kumar Ghose and said the acts were in the nature of a conspiracy to wage war and not for the purpose of avenging private wrongs of an individual. That concluded the case against Barindra Kumar Ghose.

Counsel would next deal with the case against Upendra Nath Banerjea, who was arrested in the garden and who also made a statement to the police. Counsel then mentioned the names of the watch witnesses who found this appellant at various places, previous to his arrest, and went on to deal with the exhibits, which implicated Upendra Nath, and the places where they were found. Counsel then referred to the confession made by the appellant. His confession received corroboration from Barin's and both the confessions were corroborated by fact and documents. It would be impossible for anybody to seriously believe that the police had concocted the evidence.

Mr. Norton next took up the case against Indu Bhusan Roy. He was one of the confessing prisoners and his confession was confirmed by the statements of Barin and Ullaskar. Counsel then went on to deal with the exhibits against the appellant.

Continuing Mr. Norton said that he would have to make one more comment in connection with the "sweet's letter;" whereas other pieces of evidence, either documentary or oral, connected Barin with individual persons the "sweet's letter" adumbrated a general rising throughout India. It was intended to sketch out a rising, more or less simultaneous, throughout India for the purpose of a particular conspiracy.

Counsel would next deal with the exhibits against Indu Bhusan Roy. First of all he would deal with the song "My motherland." It was written in Bengali and the first stanza runs thus:

"O Banga mine, my mother Banga. O my nurse, my native land!

O mother, why thy visage dimm'd thy hair untrimm'd with oily hand?

O mother, why thy cloths are shabby, why thy seat the dust (and sand.)

With (all) thy sev'nty million children thee claiming "Motherland."?

Reck thou little of thy woes,

Reck thou little of thy want,

Reck thou little of thy griefs,

Reck thou little of thy brand.

When sev'nty million voices hail, in chorus thee "My Motherland."

The Chief Justice: Why do you read through this?

Mr. Norton: This was the universal teaching, showing that these young men had formed the picture of their motherland in constant distress,

The Chief Justice: This, I understand, is a popular song throughout Bengal.

Mr. Das: It was written by a Deputy Magistrate.

Mr. Norton: It depicts to them the unhappiness of their motherland. The Deputy Magistrate may have written it in perfect good faith, but that was not the view the young men took. I lay special stress on the last verse.

"And though around thy gleams celestial, has now gather'd horrid gloom,

The clouds shall melt and greener glory on thy front shall once more bloom;

No driven cattle we but men, we will my mother wipe thy brand,

My Goddess, my devotion's crown, my 'lyseum, my native land!

Reck thou little of thy woes,

Reck thou little of thy want,

Reck thou little of thy griefs,

Reck thou little of thy brand.

When sev'nty million voices hail, in chorus thee "my motherland."

Mr. Norton next took up the case of Ullaskar Dutt who was implicated by the confessions of Barin, Upen, Rishikesh and

Krishnajiban Sanyal besides his own. Ullaskar's father was the Professor of Agriculture at the Shibpur Engineering College and Ullaskar started a private laboratory there. Counsel then mentioned the names of the watch and shadowing witnesses. He was arrested on the 2nd May at the Mooraripukur Garden. Counsel then went on to deal with the exhibits which connected Ullaskar, after which Mr. Norton read Ullaskar's confession and said that it was a true one and it received corroboration from many of the appellants.

Counsel then dealt with the case of Bibhuti Bhusan Sircar who was implicated by Barin, Upen, Ullaskar and Indubhusan. The appellant also made a confession in Bengali which was duly proved. Counsel then said that Bibhuti was arrested at the garden. He said that he went there for the purpose of reading *gita* but from the evidence and surrounding circumstances it was evident that he was there for some other purposes. If he was innocent the onus lay on him to prove that.

Mr. Norton then dealt with the exhibits that connected Bibhuti. He was connected with the *Yugantar* mess and his name appeared on one of the maps, which was found in the garden. This concluded the case against Bibhuti.

The Court then rose for the day.

THIRTY-SECOND DAY'S PROCEEDINGS.

Mr. Norton continuing his address took up the case of Hrishikesh. On the 11th May Rishikesh made a confessional statement and was also implicated by the confessional statements of Barindra Kumar Ghosh and Ullaskar Dutt.

Mr. Norton then referred to the various documents, which, the prosecution alleged, showed Rishikesh's connection with the conspiracy. Judging from his confession Rishikesh's vindictiveness against British Rule would probably tempt him to bring in as many men as he could. The phrase "preaching the new cult" which occurred in one of the documents, said Counsel, could not mean anything but assassination.

Mr. Norton: His name is not mentioned in any of the confessions. The absence of his name rather fits in with the theory I was advancing on Monday that the confessions of the 4th only implicated those who were arrested up to that date. This boy was arrested on the 10th.

Counsel continuing said:—Ullaskar Dutt, Indu Bhusan Roy, Upendra Nath Banerji and Rishikesh Kanjilal declined to say anything. The others made statements with which Counsel would deal later. Although Rishikesh withdrew his statement before Mr. Beachcroft he did not say it was false.

Mr. Norton then dealt with the case of Krishna Jiban Sanyal, another boy who made a statement. Counsel said Krishna Jiban was arrested at Maldah on the 12th May. He came to Calcutta with Norendra Nath Baxi who had been acquitted.

Among the documents found at the garden said Counsel, were some school books, which, the prosecution alleged, belonged to Krishnajiban.

Mr. Das admitted that the school books were Krishnajiban's.

Continuing Mr. Norton said that in a box was found a pocket book with a piece of paper having the names and prices of certain books on it. Among the books named on that piece of paper were "Garibaldi," "Russo-Japanese War" and "Human Bullets." The names of those books were interesting because the general purpose of the conspiracy was revolution and for the purposes of that conspiracy the conspirators wanted knowledge.

In Krishna Jiban's house were also found thirty-nine copies of the *Yugantar* of various dates, some of the copies dating back to 1906. That was probably the origin of Krishna Jiban's subsequent action.

The Chief Justice: On his own statement he was in the garden for a very short time. He is young and the question is whether these conspirators who, according to you, are men of light, would allow this lad to come in.

Mr. Norton: They might not allow him to come in to the extent of taking an actual physical part in any overt enterprise, but that they intended to use him for other purposes is perfectly clear. They may not have allowed lads to take part in any overt acts but they utilised them for the purpose of procuring money. That brings him at once within the illustration and meaning of section 10 Evidence Act. His object was not to wage war but to contribute money for waging war. He had become impregnated with the noxious doctrines preached by the "*Yugantar*" for a year and a half before he came down to the garden. It may be, as Mr. Beachcroft says, that he has been more sinned against than sinning. Mr. Beachcroft may have been very much impressed with his youth.

The Chief Justice: All that may show that he was not a party to the real conspiracy.

Mr. Norton: It may show that he was not a party to some of the real acts of the conspiracy. My argument is that he was an assenting party to some of the general acts for waging war. As soon as he becomes an assenting party he is as guilty in law as the man who naturally takes a cannon and points it at the Government House. According to Barindra, Upendra Nath and other leaders

had discussed the question of the assassination of the Viceroy and there is nothing to show that it was not an open discussion.

The Chief Justice: If we accept Krishna Jiban's statement he told us what lectures he attended.

Mr. Norton: Yes.

The Chief Justice: Two lectures on explosives.

Mr. Norton: Yes. If he attended such lectures and saw a number of young men there, it is impossible to say that he did not know what their purpose was. The suspicion then arises that he must have been aware of what they were going to do. Although he may not have been taken into the actual secrets, it is not difficult to say that in consequence of his comparative youth he was not to take part in any overt acts but to furnish the sinews of war. I do not want to press the case against this young man unduly, but the hand of a boy of sixteen is quite as capable of pulling a trigger or throwing a bomb as a man of thirty-two.

Counsel then read the confession which was made by Krishna Jiban Sanyal.

The Chief Justice: What seems to be in Krishna Jiban's favour among other things is this:—He made the statement without any apparent endeavour to save himself. Supposing we take his statement in its entirety, can we say on that he was a party to the conspiracy? Assuming that there was a conspiracy he was in a very dangerous neighbourhood no doubt?

Mr. Norton: No. On itself we cannot.

The Chief Justice. I think you are right.

Mr. Norton: If I were in the position of a Judge I would not convict him on that alone. But the real value of the statement is the light it gets from other collateral circumstances. There were two facts against him, namely, his previous connection with the "*Yugantar*" and his association with the garden. I quite admit that his youth is a matter to be taken into consideration, but if the facts establish the guilt, then I submit, it is a question of sentence.

Mr. Norton then dealt with the case against Hem Chandra Dass, who was arrested at 38-4, Raja Naba Kishen Street. He was implicated by Barin, Ullaskar and Upen. Hem Chandra had been a very cautious man throughout. He made no statement before Mr. Birley and refused to give his name and even sign his statement. His house was searched once on the 2nd May and again on the 3rd May, but nothing incriminating was found there and the answer to that was that one would not expect to find any incriminating things at his house, because everything was removed

from that house on the 21st April. This was the man who went to Paris, the case for the prosecution being that he went there for the purpose of learning bomb-making. This appellant, the Crown admitted, had some idea of photography and he had a desire to deal in jewellery, possibly for the purpose of increasing his own income.

The Court then rose for the day.

THIRTY-THIRD DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown said that when their Lordships rose on Tuesday he was dealing with the incident at 134, Harrison Road. In this connection Counsel read the evidence of Balai Chand Ganguli and Suresh Chandra Ghose and said that there was no conflict between their statements. Balai was in a position to mention Hem Chandra Dass by name to Suresh, and the moment the name was mentioned Suresh had reasons of his own for connecting the name with that of the man who came from Midnapore. Unless Inspector Purna Chandra Biswas was engaged in a conspiracy to swear away the liberties of innocent men, it was clear that on the 17th he received a slip from one of the two policemen in consequence of which telegrams were despatched to Poona and Nagpur, and Purna Chandra Biswas himself left on a journey. When Purna Chandra Biswas returned on the 28th Suresh Chandra Ghose made a report to him with reference to the same incident.

Mr. Norton then read Hem Chandra Dass' letters from Paris to his wife. In his first letter Hem Chandra said he had taken up the sacred vow of renouncing the world. That, Counsel remarked was absolutely inconsistent with the theory that he went to Paris to study the business of a jeweller. In another letter he advised his wife to read the "*Sandhya*" and the "*Yugantar*" and said that unless she read daily she would not be able to understand the connection between current events and events that had gone before. He also referred to Lala Lajpat Rai and Ajit Singh and said he had made a good deal of money by selling Lala Lajpat Rai's portrait. Patriotism, remarked Mr. Norton, went hand in hand with pecuniary profits. In another letter Hem Chandra referred to the condition of mother India. That, remarked Mr. Norton, was the condition vividly, but untruly, depicted by the "*Yugantar*."

Mr. Norton then said that the case for the Crown was that Hem Chandra Dass went Home not for the innocent purpose of learning how to enlarge photographs or to make jewellery but to learn how to make bombs.

Mr. Norton said that if the evidence in this case showed that Hem Chandra had gone to Paris in furtherance of the purpose of

the conspiracy, to learn how to make bombs in order to make himself a useful member of the conspiracy, then the fact that Hem Chandra joined the conspiracy at a later date did not mitigate his guilt under the law. Mr. Beachcroft had held against Counsel on this point but he submitted that Mr. Beachcroft was wrong on his interpretation of the law. The evidence did not actually connect Hem Chandra with the conspiracy until some time in January. Having reasonable grounds for supposing that Hem Chandra Dass was a member of that conspiracy of which there were active indications before January, they had to see what he did—if he did anything—to qualify himself for that conspiracy. His going to Paris was distinct evidence of his going there to learn how to make the bombs because he went there in pursuance of the teachings of "*Yugantar*" which was the national organ of this band of assassinating conspirators.

Mr. Norton next said that Hem Chandra Dass was mentioned in three confessions, namely, the confessions of Barindra Kumar Ghose, Ullaskar Dutt and Upendra Nath Banerjee.

Hem Chandra Dass, said Mr. Norton, had played a most important part in the conspiracy. He was a man of greater age and more considerable experience than the boys and knew very well what he was doing. Throughout he had been an extremely cautious and careful man—and Mr. Norton did not blame him for that—and a man of considerable thought. Hem Chandra had travelled a good deal over the world and had a large grasp of mankind and that made his position even worse than the position of some of the others.

Mr. Norton then dealt with the case of Sudhir Kumar Sircar.

Counsel placed the documentary evidence against Sudhir before their Lordships. These documents consisted of a number of letters written to Sudhir by his brothers asking him to be moderate in Swadeshi. There was a letter addressed to Sudhir at 41, Champatola Lane. This showed that at that time Sudhir was living with the conspirators. Counsel referred to another letter written by Sudhir and found at his father's house at Khulna in which Sudhir said that he had taken a vow to serve his motherland. Mr. Norton then referred to several other letters written by Sudhir but none of which were proved by Sudhir's brother.

Mr. Norton next referred to a postal M. O. receipt book in which there was an entry of a money order of Re. 1 sent by Sudhir from Seal's Lodge, Deoghur. The defence suggested that it was put there by some conspirator on behalf of the Crown, probably by Alum. Counsel next handed over two post cards, one said to have been written by Barin and another by Sudhir.

The Court then rose for the day,

THIRTY-FOURTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown said that at the last sitting of the Court he was dealing with the case of Sudhir Kumar Sircar and was discussing the postcards and he would repeat his remark that they were scurrilous post cards. The case for the Crown had always been, and still was, that the postcards and the other letters did go from Khulna and were written by Sudhir. But should it be that it was not so, and should it be that these two letters were in the handwriting of say Nibaran, then Counsel submitted that that fact, if true, made the case against Sudhir infinitely worse. There could be no doubt whatever that Sudhir had been proved to be up to the very hilt in this conspiracy.

As regards Sil's Lodge, Mr. Norton said that the names of the persons referred to in connection with Sil's Lodge were Sudhir, Sailendra Kumar Ghose, C. V. Lelly, Prokash Chandra Bose, Upendra Nath Bose, Sailendra Nath Bose, Profulla Chaki and Ullaskar. These persons were identified by witnesses whom Counsel would mention later. In connection with Sil's Lodge there were certain documents of very grave importance. These documents were Ex. 767 which brought in Abinash's name and Ex. 768 which brought in 23 Scott's Lane. Ex. 769-1 was a wrapper addressed to Prokash, dated the 26th March, 1908. Ex. 760-2 was also a wrapper addressed to Prokash, dated the 18th March, 1908. Ex. 770 was an Indian national anthem on which was the name of P. K. Chaki. Ex. 772 was a copy of the "*Navasakti*" newspaper, dated the 29th March, 1908, containing the article "Rumours of India being independent," Ex. 773 was a copy of the "*Bande Mataram*" newspaper dated the 10th February, 1908 containing the article "Leakat Hossain". Ex. 771 was a slip of paper containing a daily resume of work. Ex. 777 was a red label bearing the name of a certain firm of chemists. Ex. 1127 consisted of nine pieces of tin which had been submitted to the Chemical Examiner and with reference to which the Chemical Examiner said that these pieces of tin corresponded with pieces of tin found elsewhere and were materials to be used for the purpose of making bombs. Ex. 624 was an unopened bottle of ammonia of chloride which was found at 134, Harrison Road. Mr. Norton was quite aware, that the finding of these things was open to the comment that they were of very common design and might be bought by the public in the various chemists' shops and also in the bazar. That, however, did not affect his argument. The very fact that these things were so common and so easily available to the public was one of the very ingredients of this conspiracy. In the book on revolution which was one of the exhibits in this case it was stated that one of the things in which a revolutionary party

should endeavour to succeed was to find out all the chemist's shops and thereby avail themselves of the most common materials which were procurable in the market. It was a curious coincidence that in these three places, 15, Gopi Mohan Dutt's Lane, 134, Harrison Road and Sil's Lodge they should find these persons dealing with apparently the same chemists, and, Counsel submitted, obviously for the same purpose. As regards the geographical position of Sil's Lodge it was isolated and difficult of access and hence it was selected for the home of the conspirators.

Mr. Norton then read the whole of the documents relating to Sil's Lodge and said that was the connection he sought to establish between Sil's Lodge and the conspiracy through the documents. Counsel next read the evidence of the various witnesses who spoke of having seen the persons he had already named at Sil's Lodge on various occasions. He submitted that the evidence was perfectly reliable. If it was intended to convict innocent men nothing would have been easier than for these witnesses to have positively identified these persons and no amount of cross-examination would have shaken their identification. Counsel next read the "monkey" letter and said that the facts contained in that letter curiously enough fitted in with the evidence of the witnesses which he had just read.

Mr. Norton then said that the two postmen deposed to seeing Sudhir at Sil's Lodge and one of them said he had spoken to Sudhir and that Sudhir had told him that he was going to Japan. That put the fact that Sudhir was at Sil's Lodge beyond dispute. If Sudhir's was not the hand which wrote the instructions on which the others acted the question was, who else could have written those instructions. The suggestion was that all these letters were written by the same hand. That was not the case for the Crown, but if their Lordships accepted the view that these various letters were written by the same hand then Barindra Kumar Ghose must have written them.

Mr. Norton then went on to deal with the case of the two Sen brothers, Sushil and Biren, who were sons of Kailash Chandra Sen, Sub-Registrar of Baniachang, Sylhet. These two brothers were arrested on the 15th May and they were sent down to Calcutta on the 18th May. Exhibit 29 (1 to 3) was the search list. Exs. 462 to 571 were the findings. During the search Kailash Chandra Sen was present throughout and he never raised any protest nor did he claim any property found there as being his. Counsel laid great stress upon this fact because the father was in Government service and was holding a responsible position.

The Chief Justice: What is your case against these two brothers?

Mr. Norton said that these two brothers were connected with the people in Calcutta who were running the conspiracy. They contributed their part to it by manufacturing explosives in Sylhet and selling seditious literature.

The Chief Justice: For the purpose of that case do you intend to show that they took part in the proceedings down here?

Mr. Norton: There is no evidence that they did anything here. At the best or at the worst I can trace them to a place like the garden. That raises a grave suspicion against them. I connect them with the physical effort in the shape of contribution by the making of powder and carrying out the teachings of the "Yugantar."

The Chief Justice: Then I take it that your case against them rests more upon what you discovered there?

Mr. Norton then dealt with the case of Paresh Chandra Moulick, who was one of the fourteen who were arrested on the 2nd May. He was also one of the persons referred to in Barindra's confession. After reading the judgment of the Sessions Judge dealing with this portion of the case Mr. Norton went on to deal with the exhibits. In conclusion he said that the case against Paresh was a very strong one.

Nirapada Roy was the next appellant whose case Mr. Norton dealt with. Nirapada was arrested on the 2nd May at 15, Gopi Mohan Dutt's Lane. The other inmate of the house was Kanai Lal Dutt, who was subsequently hanged for the murder of Norendra Nath Gossain, the approver. Krishnajiban in his confession implicated Nirapada.

Mr. Norton then dealt with the exhibits in his case and read the evidence of the shadowing witnesses. Referring to the purchase of enamelled bowls and cups and some acids by the appellant from Messrs. D. Waldie and Company which was described by the defence as police concoction, Mr. Norton said it was very difficult to identify ordinary bowls and cups and although he was not in a position to produce the original receipts there was the evidence of the clerk from Messrs. D. Waldie and Company who spoke of the sale on that date and proved the counterfoils.

After dealing with the exhibits, Mr. Norton referred to the various documents which implicated this appellant. Counsel had not concluded when the Court rose.

THIRTY-FIFTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown dealt with the remaining exhibits which related to Nirapada. In this connection Counsel said that Nirmal was connected with the

" Chatra Bhandar " as his name appeared in one of the vouchers of the Bhandar.

The Chief Justice asked what evidence there was to prove that it was Nirmal's signature.

Mr. Norton said that was proved by comparison with Nirmal's signature before the Magistrate and the Sessions Judge.

Mr. Das said that those two documents had not been put in and proved and hence there was no evidence that this was Nirmal's signature.

The Chief Justice : It is incidents like this which make us doubtful from time to time as to the evidence submitted. There is not a tittle of evidence to prove that it was Nirmal's writing, but yet it is put forward as having been proved. That is not the way in which the case for the Crown should be put forward.

Mr. Norton : I am sorry to hear your Lordship say that. The letter was put in for the purpose of showing the association of these persons with the " Chatra Bhandar " in order to enable the Assessors to come to a conclusion—

The Chief Justice : That is quite wrong.

Mr. Norton : Suppose, you take a case in which you cannot actually prove the writing but there are circumstances—

The Chief Justice : Then you cannot prove it.

Mr. Norton : I will put my case in this way and take your Lordships' ruling on it. I say that these accounts, assuming their origin is genuine, come from an Association with regard to which at any rate some persons other than Nirmal, have been proved to have been associated with. With regard to the signatures of the other persons there is evidence of comparison. Some of these other persons, who are among the accused are certainly shown to have been connected with the local " Chatra Bhandar " and among them is one who is not proved to have any connection with the " Chatra Bhandar " but is connected with these other persons by different documents ; even if I cannot prove the writing of this other man to be his in consequence of the absence of comparison, am I not entitled to suggest that under the circumstances these other documents confirm the view that that writing is this other man's ?

The Chief Justice : We should have to investigate the whole history of the " Chatra Bhandar." We would have to find out the names of the persons who conducted the " Chatra Bhandar," the names of the clerks and those who ordinarily wrote letters before we could come to any conclusion that Nirmal was proved to be Nirapada. Are you in a position to prove that ?

Mr. Norton : No.

The Chief Justice : We are trying men for offences which may involve their lives. It is the duty of the Crown to place before us evidence on which we can act with safety.

Mr. Norton : I am sorry to hear your Lordship say that the case for the Crown has not been conducted in the way that it ought to have been. That was my view of the law. If I made a mistake I must take the consequences. But I certainly did not put this in with the object of getting evidence.

The Chief Justice : The document is perfectly properly put in. But it is not proved on the evidence at present placed before us and before the Sessions Judge that it was written by Nirmal.

Counsel then went on to say that so far as Nirmal was concerned he would drop this point but with regard to the others there was proof. The persons who were connected with the "Chatra Bhandar" were Abinash, Satyendra, Indra Nath, Sishir, Barindra and Abinash Chandra Chakraborty.

Mr. Norton then dealt with the case against Abinash. He said that Abinash was arrested on the 2nd May 1908 at 48 Grey Street, by Superintendent Creagan and Inspector Gupta. Abinash was acting in concert with Barindra in conducting the "*Yugantar*" and in connection with the "*Yugantar*" he with the aid of Upendra Nath, ran its offshoots, namely, the "*Mookti Kone Pathe*" and "*Vartaman Rana Nity*" of which nearly three hundred to four hundred copies were recovered from the appellant at the search. It was said that Abinash transferred his ownership in the "*Yugantar*" to somebody else but Counsel denied that on the strength of Barin's own statement. In connection with the conspiracy Abinash lived for some two or three months at 23, Scott's Lane, with his friend Sailendra. The part which Abinash played in the organisation of the conspiracy was that it was he who was mainly responsible for the appeal which was made to the young men of Bengal on behalf of the "*Yugantar*." He intended to carry on the literary part of his efforts by issuing the "*Nabasakti*" newspaper and in connection with this venture he issued a prospectus intimating that the "*Nabasakti*" would be conducted by the past members of the "*Yugantar*" staff. Abinash was closely associated with Barindra throughout and had been described by Barindra as his right hand and lieutenant. He was also all along associated with Sailendra and both of them were associated at 48 Grey Street, on the 2nd May. Abinash was a very effective member of the conspiracy for through the columns of his paper he carried on the seditious propaganda of the conspirators throughout the whole of Bengal. There was evidence to show what effect his writings had on the minds of the young men of Bengal.

Counsel then dealt with the exhibits relating to Abinash and read the evidence of the shadowing witnesses.

Mr. Norton then dealt with the case of Sailendra Nath Bose. So far as they could find from the first to the last, he was connected with Abinash. Sailendra was always living with Abinash in the same house. He was also connected with 23, Scott's Lane, and 48, Grey Street, the *Yugantar* and the Sil's Lodge. He was sub-manager of the "*Yugantar*" and was arrested at the "*Nabasakti*" Office. It might be that he took a humble part but he did as best as he could. After reading the judgment of the Sessions Judge, where he dealt with Sailendra, Counsel referred to the exhibits, which implicated Sailendra.

Counsel had not concluded when the Court rose for the day.

THIRTY-SIXTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown referred to the evidence of the shadowing witnesses against Sailendra and said that there was no doubt that Sailendra was guilty.

Mr. Norton then dealt with the case against Balkrishna Hari Kane. The evidence against him was documentary and the central pivot of the case for the prosecution against this man was that his name was mentioned by Barin. Kane had all along been alluded to as the Madrasi and his name was not known until the 3rd or 4th of May when Barin made a statement to the police.

The Chief Justice: How can a statement made by Barin to the police be used for the purpose of showing that Balkrishna was a member of the conspiracy?

Mr. Norton: Biswas said "Barin gave me the name of Balkrishna." Who was that Balkrishna? The present accused. It is impossible to say how Balkrishna's name cropped up unless there had been some preliminary observation made with regard to the Madrasi.

The Chief Justice: At the present moment I will refrain from expressing any opinion. We cannot draw any inference that it was used in a way that would incriminate Balkrishna. All we can do is to treat this evidence to show that a particular name was mentioned by Barin to Biswas.

Mr. Norton then referred to the slip of paper found at 15, Gopi Mohan Dutt's Lane, which bore the name "B. H. Kane" and to the Sessions Judge's judgment regarding the identification of Kane.

The Chief Justice: The point we are concerned with is whether that B. H. Kane is this Balkrishna Hari Kane.

Mr. Norton: Yes. The resemblance between B. H. Kane and the accused is very close. We have also the circumstances that a

man, named Balkrishna Hari Kane, is one of the accused, and that, if the evidence is true, he was seen in Calcutta on various dates and was followed to 15 Gopi Mohan Dutt's Lane, where a piece of paper with his name and address was found. That is exceptionally strong evidence to justify the inference being drawn that it is the same man. That is a question of circumstantial evidence apart from the question of writing.

Mr. Norton then dealt with the cases of Taranath who had absconded and Indranath. The case against Taranath was that as far back as 1906, contemporaneous with the "*Yugantar*," he had allied himself with that newspaper, which the prosecution said, was one of the main instruments of the conspiracy for the purpose of pushing the doctrines of that conspiracy and made himself an instrument for the propagation of these doctrines. The connection between him and Abinash is clearly demonstrated from the correspondence as also the connection later on between him and Indranath. So far as Taranath himself was concerned, the prosecution started with the fact that on the 19th May 1908, a search was made by the police at 4, Raja's Lane.

The Chief Justice: Taranath has not been charged in this case.

Mr. Norton: He has absconded and a warrant has been issued for his arrest.

Continuing Mr. Norton said that at the search at 4, Raja's Lane, was found a box containing a very large quantity of cartridges. There were between 1,400 to 1,500 cartridges of all sizes and calibers. In the same box was also found a quantity of correspondence which was even more important than the ammunition.

Turning to the case against Indranath Counsel referred to the injuries on Indranath's hands and said that the English writing on the three post cards, exhibits 1083, 1084 and 1085, had been held by the Sessions Judge to be the same as the handwriting on exhibits 78-1A and 78-1B which were proved to be in Indranath's writing. In the Sessions Court, Indranath refused to say anything about these postcards and all that his Counsel said was that they were not proved to be in Indranath's writing.

Mr. Norton read a booklet called *Panchab* by Siromoni found in Taranath's box and a manuscript article headed "Ready to die." Counsel next referred to a number of letters found in Taranath's box. There was one letter which referred to cartridges and which was found by the Sessions Judge to be in the handwriting of Indranath.

Continuing Mr. Norton said that the letter showed Indranath's past connection with Taranath, Nibaran, Bhupen and Abinash.

The case against Indranath was partly oral and partly documentary. He was arrested on the 23rd June at his father's house at 37, College Street. He was the armourer of the conspiracy and there was evidence that he dealt in cartridges.

Counsel next referred to the oral evidence and the depositions of two nurses who heard a loud report at the house of Col. Nundi on either the 6th or 7th of June.

Mr. Norton observed that according to Col. Jordan the marks could not have been caused by anything else but gunpowder.

The Chief Justice observed that the defence was that they were due to skin disease or to gunpowder explosion long before the accident on the hand.

Mr. Norton suggested that the defence did not disclose the real story and made all sorts of suggestions. Col. Jordan was cross-examined on that point by suggestions of some diseases. The defence did not produce any evidence to support their theory.

The Court then rose for the day.

THIRTY-SEVENTH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown referred to the marks on Indra Nath's body and read the evidence relating to them. It was incumbent on the defence to have given substantial evidence with regard to the so called marks and thus to have given the Crown an opportunity of testing the truth or otherwise of the story put forward as regards the marks on his body. As regards Indra Nath's connection with the Chatra Bhandar it was admitted that he was the Secretary of that Association, 40 per cent of the earnings of which were to be set aside for the good of the country. Indra Nath's name also appeared on the back of a piece of paper with the names of Barindra, Harish and others, and Counsel submitted he relied on that fact as strong evidence showing the intimacy between Indra Nath and the other men, whose names appeared on that paper.

The Chief Justice: How is it brought home to Indra Nath?

Mr. Norton: I can only use it as evidence to show that he was one of the co-conspirators in this case. If I have no other evidence then this document is useless, but if I have evidence to connect him with the conspiracy then this piece of paper becomes of great importance because it shows that he was connected with the persons whose names appear on the back of that paper, conspicuous among whom are Barindra and Harish. I can bring it within section 10.

The Chief Justice: Then in order to bring it within section 10 you will have to show that it is a statement made by one of the conspirators.

Mr. Norton: Quite so.

The Chief Justice: The only evidence we have which is connected with any individual is that it was found in Nikhileshwar Ray's house.

Mr. Norton: Yes.

The Chief Justice: Who is the conspirator who made this statement?

Mr. Norton: I say that every person whose name is on the back of that document assisted in making that statement.

The Chief Justice: Supposing one of the newspaper reporters writes your name down as having been seen walking along Chowringhee. Would you make that a statement.

Mr. Norton: No. If there was evidence to show that that reporter and I had been permanently connected together then it would be evidence.

The Chief Justice: Who made this statement?

Mr. Norton: I cannot say who made it. I say that they all made it.

The Chief Justice: Supposing it was a statement written by Nikhileshwar, kept by Nikhileshwar himself and found in Nikhileshwar's possession?

Mr. Norton: Then it would not implicate any one except Nikhileshwar and he has been acquitted.

Continuing Counsel said that this document came from 41, Champatollah Lane which was the Sadhana Press and the latest connection between the Sadhana Press and 41, Champatollah Lane was in July, 1907. He submitted he had brought Indra Nath within the general purview of the law which said that when there were two or more conspirators everything done or written by one was evidence against the others.

Counsel next referred to the connection in the Jamalpore case in 1907 when Indra Nath and Sishir were bound down under section 107 of the Criminal Procedure Code. He submitted that he was entitled to use the judgment in that case not as a conviction but for the purpose of showing the circumstances under which Indra Nath and Sishir were bound over.

The Chief Justice: Are you entitled to use the opinion of the Judge in one case as evidence in another case? You remember Lord Chief Justice Bramwell's decision in the case of *Seoman and Owen*,

Mr. Norton: I rely on section 43 of the Evidence Act which says "judgments, orders or decrees, other than those mentioned in sections 40, 41 and 42 are irrelevant, unless the existence of such judgment, order or decree, is a fact in issue, or is relevant under some other provision of this Act."

The Chief Justice: You don't want to prove the conviction?

Mr. Norton: No.

The Chief Justice: You want to prove that he was not convicted?

Mr. Norton: No, I want to prove that at a certain place he was found doing things which resulted in his being bound over.

Carnduff, J: You want to prove association?

Mr. Norton: Yes, with Sishir.

The Chief Justice: You want to prove that Sishir and he were together.

Mr. Norton: Yes, with revolvers. A Mahomedan was shot in those riots. I have some independent evidence also.

The Chief Justice: Can you cite an authority?

Mr. Norton: No.

The Chief Justice: Have you looked for authority?

Mr. Norton: Yes, I have not been able to find any.

Mr. Norton then read the oral evidence on this point and said that his junior had found a case reported in 1 Calcutta Weekly Notes which supported his view as to the admissibility of this judgment.

Mr. Chackervarti: I wish to point out to your Lordships that there is a case in 4 Calcutta Weekly Notes which dissents from that view.

Mr. Norton: So much the better. Then your Lordships can decide between the two. I don't care about the connection.

The Chief Justice: That Sishir and Indra Nath were at Jamalpur on a particular day.

Mr. Norton: Yes, in connection with the Swadeshi movement. One of the objects of this conspiracy was to terrorise persons into accepting the views set forth in the "*Yugantar*."

Mr. Norton then referred to Indra Nath Nandi's connection with the "Chatra Bhandar" and said that that was the case against this accused, who refused to answer any question before the Sessions Judge.

Carnduff, J: Before you leave this case there is one matter I wish to mention. It has been said that you ought to have called

Colonel Nandi. Personally I am satisfied that there was no obligation to call Colonel Nandi for the reasons you gave on Wednesday. It has also been said that the Court might have called Colonel Nandi. It seems to me that it is open to us even now to call Colonel Nandi to give him an opportunity of giving evidence.

The Chief Justice : With regard to that I must say distinctly that I have very strong objections to the Court forcing any witness on the parties at this stage. It is a most dangerous practice, but if an application is made I will listen to it.

Mr. Norton : It is not for me to make that suggestion.

Carnduff, J : I don't wish to force him in any way, but I think an opportunity might be given to him even now in the interest of justice.

Mr. Norton : I have an extremely strong disinclination to make any such application for many reasons, but I shall not resist any application being made by the other side to call him. The gentlemen for the defence had ample opportunities of calling Colonel Nandi. They did not do so and the only ground suggested for their not doing so was that they would lose their right of reply. If they believed that Colonel Nandi's presence was desirable in the interest of truth and justice they should have shut their ears to any suggestion of losing the right of reply in favour of Aurobinda or anybody else.

The Chief Justice : I suppose if we accede to an application to Colonel Nandi being called then we should have to accede to the requests to call any number of witnesses on the same point.

Carnduff, J : I make the suggestion only because it was said by the defence that as Mr. Beachcroft had not called Colonel Nandi we might call him. If that is so I would rather that justice be done. Let us give him the opportunity of coming now.

Mr. Norton : For the Crown we shall raise no objection.

The Chief Justice : How about other witnesses ?

Mr. Norton : That is another matter.

The Chief Justice : It will alter the shape of the appeal altogether.

Mr. Norton : It will be endless. There was no obligation of any sort—intellectual, moral or judicial—on the part of Mr. Beachcroft to call Colonel Nandi. Mr. Beachcroft was not bound by any law that I know of to call Colonel Nandi. The other side tried to get Colonel Nandi's evidence without losing the right of reply. No Judge is bound to call any witness except when the interests of justice in that particular case are to be served. The defence had not opened their case and it was open to them to call Colonel Nandi then or even at the last moment.

As regards the three other accused Sishir Kumar Ghose and the two Sen brothers Mr. Norton left their cases to their Lordships' hands and proceeded to deal with the questions of law involved in the case.

Mr. Norton then submitted that the alteration of the charges and the joinder of charges did not prejudice the appellants in any way, and in support of his contention cited several cases, Counsel next dealt with the substantive law with regard to the question of conspiracy. According to the Indian Penal Code there was no offence of substantive conspiracy except in Section 121 (A). All other forms of conspiracy must fall under the other section *plus* the section of abetment, Section 109, and in those cases it was necessary that there must be some overt acts. But under Section 121 (A) the law was different, the offence under that section being substantive offence in itself it was committed so soon as evidence was forthcoming to prove the intention and agreement. In that respect, the Indian law differed in no way from the English Law. In support of his contention, Counsel cited 14 Cox 505, 15 Cox 291, Law Report, 3 House of Lords 306, and several other cases. He then said that despite the absence of military display, science had put into the hands of the accused infinitely more powerful weapon than the force ordinarily used by the soldiers, and that force was used for the purpose of disseminating sedition throughout the country. This teaching went on and for what purpose? To secure the complete independence of the country. That brought the appellant within the purview of waging war. In addition to that they knew that the destruction of the Queen's property and of her subjects' lives was in itself an act of waging war. Here the appellants attempted to take the lives of the Lieutenant-Governor, Mr. Kingsford and the Mayor of Chandarnagore, and these attempts were not made in vindication of the spirit of revenge but to terrorise Government. From the cases cited it appeared that the destruction of public buildings was an act of waging war and if that was so the destruction of human lives was certainly an offence of waging war. In this connection he would say that the charge of conspiracy might be well founded even if the parties did not know each other. These were all the points he would deal with concerning the points of law and the permission of the court he would now leave the rest of the case in the hands of his learned junior, Mr. Harry Stokes.

The Chief Justice: I should like to hear your views on Section 122. There is a further point. Mr. Das contends that on any event the earlier numbers of the "*Yugantar*" are not evidence under Section 10 of the Evidence Act, that only four articles come within the period of the charge and therefore he maintains that the earlier articles, all the articles other than those four,

can only be utilised against those to whom they are directly brought home.

Mr. Norton : We already dealt with those points.

The Chief Justice : I think you dealt with the question of multiplicity of charges ?

Mr. Norton : It is a very short answer. It is a "transaction" of the conspiracy and therefore it comes within Section 239. Cr. P. C.

The Chief Justice : Your charge under Section 122, assuming you establish your charge under Section 121-A, would not be anything distinct. Supposing we convict under Section 121 (A) it would not be right for us to convict under Section 122. The case is more clearly under Section 121-(A) than under Section 122.

Mr. Norton : They were only alternative charges. I never asked for a double conviction.

The Chief Justice : I think it is fair to mention it now. It is in relation to confessions. First of all, let us go back to Section 164 (reads). Mr. Das's argument has been that here the confessions were recorded after the commencement of the enquiry. There are just two points. First of all there is this :—Whether the words "before the commencement of enquiry" are not to be limited to "or at any time afterwards." The Act of 1882 makes it clear because it has a comma after "chapter," so it seems to be in the course of investigation under this chapter or any time afterwards before the commencement of the trial. But the comma is not in the present act. This is one point. The next point is this. The words are "before the commencement of the enquiry or trial." When does this enquiry commence ? The enquiry in this case commenced on the 3rd May, before the confessions were recorded. If you take section 190 Cr. P. C. which is part of chapter 15 dealing with jurisdiction of courts in enquiries and trials you will find much of the phraseology has been borrowed from that section. "A"—place of enquiry and "B"—conditions requisite for the initiation of proceedings. Those conditions must be confirmed. What are they ? First receiving the complaint. There was no complaint here on the 4th May. Then upon information received from any person other than a police officer. Here Mr. Clarke was the person who gave the information. He was not a Police Officer. Then the words are "or upon his own knowledge." It does not appear that he had his own knowledge. So that the point that Mr. Das will have to consider is whether it can be said that proceedings were initiated or could be initiated except in one of those three conditions and none of those points were apparently satisfied until the 18th. I am not expressing any conclusive opinion now. I merely indicated what struck me.

At this stage Mr. Norton left the Court and Mr. Harry Stokes went on dealing with the rest of the case.

Mr. Stokes in dealing with the case of Sishir Kumar Ghosh said that the case against this man was a very serious one. He was an active member of the conspiracy with full knowledge of its objects.

The Chief Justice : Do you attribute any particular part to him.

Mr. Stokes : He was taking the part of a missionary as indicated in Barin's books. There was a suggestion in those books that he was something more than that—that he was to join the first man in the first circle of workers in addition to his own work.

The Chief Justice : Are you going to ask us to hold that he waged war ?

Mr. Stokes : He was guilty of the conspiracy of waging war. He was not found in connection with any of the overt acts.

Continuing Mr. Stokes said that on the 29th January, 1907, Sishir left school and then instead of taking up any profession he got connected with the *Chatra Bhandar* and the *Yugantar*. They also found Sishir taking part in certain political movements in Jubbulpore. They however did not find much trace of Sishir towards the end of 1907. But Counsel thought, it was clear that he was connected with Barin at any rate before that. Though he was arrested in the garden, his defence was that he did not know anything of what was going on in the garden. Counsel then cited some exhibits to prove that he was guilty.

The Chief Justice : What is his age.

Mr. Stokes : About 21 years.

Mr. Stokes then went on dealing with the exhibits and had not concluded when the Court rose for the day.

THIRTY-EIGHTH DAY'S PROCEEDINGS.

Mr. Stokes continuing his argument on behalf of the Crown referred to the statement made by Sishir Kumar Ghose before the Sessions Judge.

Mr. Das : I do not know whether my learned friend can refer to that statement before the Sessions Judge. It is neither signed by the Sessions Judge nor does there appear the usual certificate under Section 364 of the Criminal Procedure Code.

Mr. Das : Not one of them is signed or certified except the statement of Arabinda as I find it from the records now.

Carnduff J: Do you say it is only signed in the case of Arabinda?

Mr. Das: Yes and in the case of Nirapada, Birendra and Susil even the name of the Sessions Judge on the top does not appear as also in the case of Indra Nath, but I do not appear for him.

The Chief Justice: What we have to be satisfied is that the Judge must certify in his own hand that it was taken in his presence and hearing and that the record contains a full and true account of the statement made by the accused. Where there are initials we may say that there was an attempt to comply with the provisions of the section. Where you have got nothing at all can you say, it is merely irregular? Is there not a complete failure to observe the provisions of the section?

Mr. Stokes: But he has taken it all down in his own hand-writing.

The Chief Justice: Quite true. But how are we to know that the record contains a full and true account of the statement made by the accused. Therefore it cannot throw any light as to what happened after it was written.

Mr. Stokes: We have got in this particular case the entire examination, both questions and answers, taken down in the Judge's own hand-writing. The section says that the statement be recorded but does not say that it must be recorded in the Judge's own writing. It is true that the Judge's name only appears in the heading but at the foot of the statement you have the signature of the accused and it was taken in his presence. That really deprives the objection of any substance and brings it into the region of irregularity because you have the accused's own signature at the foot of the statement. If this was in the hand-writing of some body else your Lordships would naturally be in the region of doubt.

The Chief Justice: For my part I don't know whether it was written by the Judge or not.

Mr. Norton: In many instances the statements were read over by the accused themselves and many of them asked that corrections should be made. I submit that some value is to be attached to the signatures of the accused persons on these confessions.

Mr. Stokes: Paragraph 3 of section 364 deals with the case to which your Lordship the Chief Justice refers. The omission of the Judge to put his signature arose from the fact that he took the extra precaution of giving the confessions to the accused to read.

The Chief Justice: There is a case in 3 Calcutta Page 756.

Mr. Das: There is a case in 12 Weekly Reporter page 44.

The Chief Justice: That does not help. I am afraid, inferentially, the case in 3 Calcutta is against you, Mr. Stokes.

Mr. Stokes then referred to and dealt with the other exhibits against Sishir which, the Crown stated, connected him with the garden.

Mr. Stokes next went on to compare the different handwritings for the purpose of showing that a particular document was in the handwriting of Indu Bhuson Roy. Judging it by comparison, Mr. Stokes said, there could be no hesitation in arriving at the conclusion that the document in question was in the writing of Indu Bhusan.

The Chief Justice : What is the standard of your comparison.

Mr. Stokes : Signature is the only standard of comparison.

Mr. Norton : There is another standard of comparison.

The Chief Justice : We cannot throw away Mr. Stokes' argument. Mr. Stoke's argument is exceedingly well. Let Mr. Stokes finish first.

Mr. Stokes then referred to several other exhibits and said that Sishir's relation to Barin showed that he had full knowledge of the objects of the conspiracy. It was not necessary for the Crown to show that Sishir knew all the intentions of the conspirators—the assassination, the blowing up; etc. As long as Sishir had the knowledge of the general intention he was guilty.

Counsel then said that the records of the Jamalpur case were admissible in this case. That judgment should be considered by their Lordships in this case apart from the question as to whether Sishir was guilty or innocent of the offence he was charged with or whether he was properly bound down or not. If he was found innocent then Counsel's argument was all the more stronger, because he put that forward simply as evidence of motive. Counsel wanted to show what was the state of Sishir's mind at the time of the conspiracy.

Mr. Norton then with the permission of their Lordships dealt with the case of the two Sen brothers—Susil and Biren. Counsel said that he would begin with the case of the two and then he would divide the case up against each of them. The case for the prosecution was that sometime in January 1908 and certainly in February, 1909 Susil was in touch with the garden. The other brother Biren, was down in Calcutta up to the 23rd March being in the National School. Both of them were cognizant of the garden, both were there and there they learnt at any rate some portions of the chemical formulæ for the preparation of bombs. Then Biren went up to Sylhet. With regard to Susil the prosecution submitted that he was right down in Calcutta up to the date of the arrest, although he was not found in the garden on the day of the arrest. That was the general case against the two brothers. They were arrested on the 15th May and sent to Calcutta on the

18th May. In consequence of a warrant issued under the Arms and Explosives Act against Susil their house was searched.

Continuing Mr. Norton said that at the time the search was conducted, Babu Koylash Chandra Sen, father of the two appellants, was present and the search list was signed by him. Counsel next went on reading the evidence of the search witnesses and had not concluded when the Court rose for the day.

THIRTY-NINTH DAY'S PROCEEDINGS.

Mr. Norton continuing his argument on behalf of the Crown said that on Friday evening when the court rose he was dealing with the case of the two Sen brothers. Mr. Norton after reading the evidence of the search witnesses went on dealing with the exhibits, that were found in the house of the two appellants.

Counsel next dealt with the case against Susil. Exhibit 475 was Biren's diary containing writings of Susil. "I am going to the lap of one, who is the mother of thirty crores of sons" was the expression written there by Susil. The case for the prosecution was that Susil contemplated about going to the garden.

The Chief Justice: Is it proved that it is Susil's handwriting?

Mr. Norton: No.

The Chief Justice: How can you attribute that to Susil.

Mr. Norton: The book was found in his own house and it bears the name of the two brothers. It gives dates which exactly tally with the oral evidence. Taking that with the rest of the evidence the proper inference is that it was written by Susil.

The Chief Justice: The difficulty is to bring the book to his possession.

Mr. Norton: *Prima facie* it belongs either to Biren or to Susil.

The Chief Justice: *Prima facie* it belongs to Biren. "I am going to the lap of one" indicate that he was prepared to give up his life.

Mr. Norton: There is evidence of conspiracy between the two brothers and in the possession of one of them was found this diary which got Barin's name upon it and inside that I find reference of a name which tallies with the name of his own brother. I submit that the possession is sufficiently brought home to Biren and if there is evidence of conspiracy it entitles me to use it against Susil. It is for him to prove that the writing was not his and in the absence of satisfactory explanation I am entitled to use it against Susil.

Mr. Norton then went on to deal with other exhibits against Susil and had not concluded when the court rose for the day.

FORTIETH DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown resumed his arguments as regards the case against Susil Kumar Sen and referred to certain exhibits found at the search of the house at Sylhet where Susil was living. Counsel read a letter in which it was stated that the National College was closed for one day as a mark of respect for the heroic conduct of Susil who had been convicted by Mr. Kingsford for assaulting the police and sentenced to a whipping of fifteen stripes.

Counsel then read several exhibits to show that Susil was a member of the conspiracy.

The Chief Justice said that to prove that Susil was a member of the conspiracy it must be shown that he was either in possession of these exhibits or that they were written by him.

Mr. Norton said he would show that these exhibits were with Barindra and that Barindra and Susil were communicating with each other on the subject.

The Chief Justice asked whether Mr. Norton would prove by these exhibits only that Susil was a member of the conspiracy.

Mr. Norton said that by these alone he could not.

The Chief Justice : Is there anything to show that at that time he was connected with Barindra ?

Mr. Norton. No.

The Chief Justice : Or that he was connected with the "*Yugantar* ?"

Mr. Norton : No. I shall show that the "*Yugantar*" sprang from the brain of Barindra and that Barindra was the instrument for propagating the views and collecting things necessary for a conspiracy. I submit that the conspiracy had ripened in Barindra's mind at the time.

The Chief Justice : Is there any evidence to show that at that time Barindra had any influence on the conduct of the "*Yugantar* ?"

Mr. Norton : No.

The Chief Justice : What difficulty we have to face with regard to different cases is this :—One must not begin at the wrong end. Before we look at the garden hocks must not we have reason to believe that Susil was one of the conspirators ?

Mr. Norton : Let us see how he stands in connection with other documents. We find among other things books containing formulae of every dangerous character in a bag which also contained some powders. You have the statement by one of his brothers that the powders were in an experimental stage for the purpose of seeing

whether they were explosives or not. Over and above that we find criptograms there. Then there was a suggestion "Have you yet made Kali Mayi's bombs?" Was he working for himself? Was he collecting those things for himself. Was it for the purpose of his own instruction or in continuation of a scheme? I submit when we find him in possession of these things it raises a very strong suspicion, and when in addition to that we find him in a place, which has been admitted, and I submit has been proved, to be the place in which the conspiracy had certainly been brought into execution and carried out it suggests that these things that were found in his possession were not for the purpose of amusement but in furtherance of a scheme which had its origin in the garden. That is why I say Susil was one of the conspirators.

Mr. Norton then dealt with the case of Birendra Chandra Sen, who was closely associated with Susil. There was, close intimacy between the brothers and they found that they were not only engaged in the same transactions but they were so closely associated that their letters were found in the same bag. They were fond of each other and Biren knew the trend of his younger brother's mind. It was not likely that any document went into the hands of his brother without Biren's knowing it and it would be absolutely impossible to believe otherwise.

Counsel then went on dealing with the exhibits against Biren and had not concluded when the Court rose for the day.

FORTY-FIRST DAY'S PROCEEDINGS.

Mr. Norton continuing his address on behalf of the Crown in the case against Birendra Nath Sen said that among the documents found at the search of this appellant's house at Sylhet was a letter addressed to Birendra by one Probodh of whom the Crown knew nothing. This letter was clearly an answer to a post card written by Birendra to Probodh, and it breathed a spirit of insubordination to the constituted authority of the land. Counsel submitted that the letter went to show that the views entertained were really those of Birendra and it showed further that he was in entire sympathy with the views expressed by the writer. It clearly showed antagonism to the constituted Government as represented by Sir Bamfylde Fuller. There was an insinuation in the letter that the Government were responsible for the recurring famines which were devastating large tracts of the country.

The Chief Justice. Would letters about extending help to the starving people be incriminating?

Mr. Norton: Not necessarily. I ask your Lordships to draw that inference from the tenor of the rest of the correspondence. I can deduce that from the correspondence as a whole.

The Chief Justice : We have to follow our progress and it is very difficult to follow the argument at the time. I was anxious to know whether it was from this letter alone or this letter read with others that you called the letter incriminating.

Mr. Norton : I can answer that question straight way.

The Chief Justice : That is the only question.

Mr. Norton : From this letter alone I don't accept the suggestion of insulting the Lieutenant-Governor. When I came to deal with the other letters this implication would get additional strength.

Counsel next referred to several other letters found in the appellant's house at Sylhet and said that there was the clearest possible evidence on record to show what Birendra's proclivities were at the time and they had given the Crown an insight into the impulses which were moving Birendra along the path of the conspiracy. Coupling this with the two note books and formulas in the house and also the fact that there was found in his possession a number of letters which contained views coincident in their trend with his own, it may be said there was strong "prima facie" evidence of Birendra's complicity with this conspiracy. No attempt at explanation had been made by Birendra. Counsel submitted in the absence of an explanation from the only person who could have made it, it was perfectly fair on the part of the Crown to draw an adverse inference against that person.

Mr. Norton then referred to the opinions of the Assessors. Every document was shown to them and they were asked to give their opinion throughout the case.

Mr. Norton : With regard to the Assessors my general observation is this. I will admit that Assessors are a constitutional part of a sessions trial and that under the provisions of the Criminal Procedure Code their opinion must be taken with consideration. But I submit that the value of an Assessor's opinion depends very much upon his finding and partly upon the reasons he gives for that finding. In this case there has been a wholesale acquittal and even when the conspiracy is found it is dubbed by at least one of them as being, to use his own words, a childish conspiracy. Where an Assessor comes to the conclusion that a conspiracy such as this is a childish conspiracy that in itself so unhinges his judgment that you must approach his conclusion with regard to the rest of the case with caution. How any Assessor can say that this was a childish conspiracy when there have been ten murders and deaths, it puzzles one to understand.

Counsel then read the opinions of the Assessors and said that the Sessions Judge had not acquitted a single individual on the ground that the evidence was untrue. Individuals had

been acquitted on the ground of insufficiency of evidence or because there was a doubt but in no case did the Sessions Judge say that he found any particular individual not guilty because the evidence was false.

Counsel then said that things said or done by one conspirator in reference to a common design were evidence against others concerned in the conspiracy and stated that in support of his assertion he relied on the provisions of Section 10 of the Evidence Act.

Turning to the "*Yugantar*" Mr. Norton said that it was actually used as an instrument of the conspiracy. Barindro Kumar Ghose had admitted that the "*Yugantar*" had been brought into existence for the purpose of expressing their views and advertising the conspiracy and nothing else.

MR. DAS'S REPLY.

Mr. Das, on the Court re-assembling after lunch, commenced to address the Court by way of reply to the observations made by Mr. Norton on behalf of the Crown. In the course of his lengthy preface Mr. Das said:—My learned friend's address consists of two parts. He began with what you call the general history leading to, as far as I can understand, the conspiracy charge, and after that he dealt with the cases of each accused separately. My Lords, there is an observation which I desire to make at the outset. I do quite understand the value which my learned friend attached to the general part of his argument. I notice in the notes that in answer to an observation of your Lordship the Chief Justice my friend said he was going to connect it later on. He has not in any way connected the general part of the history afterwards with the history of Bengal for the last 10 years. He has not made a single submission to you that the history of the Swadeshi movement in Bengal or the Partition Agitation in Bengal has led up to this conspiracy and at the outset of my address I desire to make this submission that what we have got to deal with in this case is direct evidence as against each person and to consider how far the evidence brings the offence home to the particular accused; and I go further my Lords and suggest that to say that because the different accused in different times took part in what is called the Swadeshi or Swaraj movement it is probable that they afterwards became members of the conspiracy and became guilty of the offence under section 121A of the Indian Penal Code is utter and gross libel on the national movement of the time. I beg to submit that not one single circumstance to which he has referred raises that presumption. If it is necessary, I desire to place before your Lordships, the history and

trend of the movement which was behind this movement here. Again, my Lords, you will find that my learned friend has referred to various abuses of the English people and officials in the correspondence and in the different newspapers. I trust that your Lordships will also view the circumstances which led up to them. Then, again, I say I do not justify for one moment the abuse; but the question is "Are your Lordships going to take the observations made in moment of irritation and anger as evidence of conspiracy under section 121A." If necessary I shall with your permission go back into the history of the different movements and the political activity of the people during the last few years. The first and foremost, your Lordships, will find is the Calcutta Municipal Bill of 1899. In its operation no doubt it was confined to Calcutta, but it evoked a general protest throughout the country because it was looked upon as a reactionary measure. It was thought and felt by the people of this country that that was the first step towards taking away the little measure of Self-Government which Lord Ripon had bestowed upon them.

Mr. Norton: I never made any reference to the Municipal Act.

Mr. Das: In the cross-examination of Mr. A. C. Bannerjee who was called as a witness for the prosecution this question was introduced. I submitted to the learned Sessions Judge that this was not relevant to this case. Your Lordship will find the reference at page 421 of the evidence in this case.

Mr. Norton: I find that there is a reference to that in the cross-examination of Mr. A. C. Bannerjee.

Mr. Das: I pass from this point, my Lords, to the Imperial assemblage at Delhi which was held at a time when there was a widespread famine in the country. Passing from that we come to the Indian Universities Act of 1904 which again evoked a general protest all over the country; and along with that we cannot overlook the speech which the then Chancellor of the Calcutta University, Lord Curzon made and which was an indictment against the whole nation. I am not dealing with the truth or otherwise of the charge or with the facts. I have nothing to do with that. I am merely going to show that some of the letters which were referred to by my learned friend as containing abuses, if your Lordship would only look at the other side of the picture you can appreciate and attribute them to their proper causes. Then we come to the Official Secrets Act which the Anglo-Indian Press even characterized as the Russianization of the administration of the country. Three or four years after that there came the Partition of Bengal which was carried into effect on the 16th October, 1905. It was before the public for nearly five years before that. I need hardly refer to the cir-

cumstances under which it was effected in the teeth of the opposition of the people of this province and in utter disregard of hundreds of meetings held all over the country and protests and petitions against the measure. It is hardly necessary for me to repeat that these protests were unheeded. My Lords it was at this time that the new national movement took its birth. To understand fully the trend of thought which characterized this movement I desire to put briefly as far as I can as a fact and as a theory the doctrine of Vedanta upon which this was based. After the Partition of Bengal there were circulars known as the Carlyle and Risley and *Bande Mataram* circulars to which reference had been made in the evidence and in the newspapers. The first two were directed against students taking part in politics and the third made it penal to shout *Bande Mataram* in any meeting or in the streets. Then we come to the Barisal and Khulna District Conferences where the police officers waited outside the meetings with warrants of arrest duly signed but not filled in. It led to criminal cases which came up to the High Court on appeal. Then there was the Barisal conference which was broken up by an order under section 144, Cr. P. C. and Babu Surendranath Banerjee was arrested for infringing the *Bande Mataram* circular and was afterwards convicted of contempt of Court, which again came up to the High Court and the High Court quashed it. My Lords matters did not rest there. After that there was a counter agitation set on foot in regard to the question of partition in which a pamphlet which is known as the *red pamphlet* played an important part. It has been held in cases tried by the European and Mahomedan Magistrates, not Hindus, that this *red pamphlet* incited the Mahomedans to do acts of violence as against the Hindus, for the purpose of making up a case against the partition agitation.

Carnduff, J. Is this referred to in the evidence ?

Mr. Das : Yes ; as also in the various newspapers put in.

Continuing Counsel said that whereas we find that the gentleman whom the learned Judge in the Court below described as the notorious Leakut Hossain, was punished for an offence under section 124A of the Indian Penal Code for writing a pamphlet based on a text from *Koran* that it was not unlawful to join in an agitation against the British Government, we find that the author of the *red pamphlet* was let go with a simple warning. It is a matter of decision of Courts of law that it was the *red pamphlet* which was at the root of all evils at Jamalpur, Comilla and other places. This began early in 1907 and went on till October of the same year or even a little after that, and although the actual occurrence was at Jamalpur and at Comilla the apprehension spread far and wide even at Kalighat in Calcutta. It was at this time that the people organized a measure of self-defence.

Carnduff, J : Against what ?

Mr. Das : Against Mahomedan rowdyism. The belief was that it was supported by certain officials of Government. It is unnecessary for us to discuss whether it is true or not. That was the impression. In consequence of this the cult of physical culture began to spread. The difficulties in the way of the new national movement since its birth became more accentuated about the time of the Mahomedan disturbances and had to be carried on under a great deal of risk for even the possession of sword-stick was made penal under the Arms Act as it has been held by one of your Lordship's decision here.

Mr. Carnduff, J : What is the relevancy ?

Mr. Das : My statements are absolutely relevant if your Lordships are disposed to attach the slightest importance to the general observations of the character advanced by my learned friend regarding the Swadeshi movement. My friend says that there were grievances whether they were real or imaginary he did not care. He says that that movement was the origin of the conspiracy, wherever the men were concerned with a Swadeshi enterprise he thinks that that enterprise is a prelude to of conspiracy. It is therefore to that part of his address I wish to draw your Lordship's attention.

Mr. Norton : I have repeatedly said that so far as Swadeshi movement as a movement is concerned that it was a perfectly honest one. I find indications here of persons who were perverting the *Swadeshi* in attempting to force physically its doctrine on merchants. Then I say it is wrong. I am far from suggesting that it was illegal or dishonest.

Mr. Das : It is unnecessary for me to say whether the Swadeshi movement is honest or dishonest. The movement is no indication of the guilt which your Lordships have to ascertain in this case. I can understand the argument if it is this—that it is only where your Lordships find that the Swadeshi movements have been perverted as a means of furthering the ends of the conspiracy it is relevant. That is perfectly clear. Your Lordships have to be convinced that in that particular case it was so perverted. But my learned friend's method of dealing with the case has been hitherto this. For instance, in Sudhir's case, he gets hold of a letter that he has picketted and at once he rushes to the conclusion that he joined the conspiracy. It is that sort of arguments against which I protest.

Carnduff, J : Is picketing necessary ?

Mr. Das : It is part of the movement. If your Lordships treat this as evidence of conspiracy you might as well say that the whole of the educated Bengal are mostly conspirators.

Carnduff, J : What is picketing ?

Mr. Das : To go in bands to different shop-keepers and ask them not to sell particular kinds of goods and offer prices for *belati* goods they have and destroy them on payment. It is a sort of league using general influence with persons who would not subscribe to the Swadeshi principles. This is the kind of evidence in this case. Your Lordships have been asked to deduce guilt or innocence of persons from these facts. The picketing movement is in vogue in the whole of Bengal in connection with the Swadeshi movement. Is it suggested that those who took part in picketing in Swadeshi movement are more or less liable to become conspirators under section 121 A.

The Chief Justice : I may say this. We cannot suppose to have any knowledge of what picketing is except so far as is disclosed by the evidence. The prosecution has not brought any evidence to show what picketing is—the only evidence of what it is is that of Mr. A. C. Bauerjee.

Mr. Das continuing said that the next point in the general history given by his friend to which he would refer was that the concatenation of events which he mentioned proved nothing because it did not supply the connecting link between the different events. Mr. Norton gave them a string of dates as to when "*Yugantar*" came into existence, when "*Navasakti*" and "*Sandhya*" were started and so forth. Mr. Das asked what it proved ? Was it the evidence of movements passing through Bengal or was it indicative of the fact that all these different events and the dates had been the result of the conspiracy.

The Chief Justice : I suppose Mr. Norton referred to "*Yugantar*" as indicative of the doctrines preached by Barin and Abinash leading up to this smaller movement which has its centre in the garden.

Counsel continuing said that what he wants to convey was that the mere mention of date did not supply any information or helped their Lordships in the slightest degree to find out whether these particular persons were guilty of the offence with which they were charged.

Counsel next said that in dealing with the case he would adopt the following order. He would put Abinash, Sudhir and Sailendra in one group. Nirapado, Hem Das and Kane in another group. Krishnajibai, Sishir and Paresh constituting the next group. He would deal with the Sen Brothers and conclude with the confessing prisoners.

Counsel was dealing with the case of Abinash when the Court rose.

FORTY-SECOND DAY'S PROCEEDINGS.

Mr. Das continuing his reply to the arguments of the Crown in the case against Abinash, submitted that the letters relied upon by the Crown to prove the connection of Abinash with the conspiracy showed an absence of connection of any kind. There was not a tittle of evidence on the record from which the inference could be drawn that Abinash was in the editorial chair of the "*Yugantar*" after September, 1907. The next document relied upon by the Crown was the rent receipt in respect of the Murari-pukur garden, dated the 24th June, 1907. When he (Mr. Das) was dealing with this case, Mr. Norton said that rent receipt was not evidence against Abinash but against Barindro, but later on Mr. Norton changed his mind and submitted that it was evidence against Abinash also. Mr. Das contended that the receipt in question was no sort of evidence against Abinash. If it did prove anything at all it merely showed that on the 24th of June, 1907, Barindro used Abinash as a sort of mohurrir at the Alipore Court. Counsel submitted that that document did not prove Abinash's connection with the conspiracy and that the other letters also did not raise the inference which his learned friend wanted to draw in this connection. The reasoning adopted by Mr. Norton in this connection was fallacious. For these reasons the documentary evidence was insufficient in this respect. If on the other hand they looked at the oral evidence, namely, the evidence of the shadowing witnesses in regard to the connection of Abinash with the garden they would find that that also failed. All the inferences and conclusions arrived at by Mr. Norton in connection with Abinash were based on a number of uncertain dates. In support of the contention Counsel briefly referred to the evidence of the shadowing witnesses. Mr. Norton had said that Satish and Suresh, (shadowing witnesses) had committed honest mistakes. The appellants were at the peril of their lives and they did not care whether the shadowing witnesses had committed honest mistakes or not. It was immaterial whether it was an honest mistake or deliberate perjury and the result was that this evidence could not be relied upon.

Continuing Counsel said that so far as the oral and the documentary evidence were concerned there was no connection between Abinash and the garden. The next question was whether Abinash's connection with the "*Yugantar*" established his connection with the conspiracy. Mr. Das then went on reading Purna Chandra Lahiri's statement.

Carnduff, J: Strictly that statement is no evidence as it was hearsay.

Mr. Das then referred to Bhupendra Nath's connection with the "*Yugantar*."

The Chief Justice: Is Bhupendra Nath a conspirator?

Mr. Norton : Yes.

Mr. Das next referred to the evidence regarding Abinash's connection with *Yugantar* in 1906 and said that apart from Barindra's confession that evidence came to nothing. If their Lordships look to Barindra's confession to ascertain what part Abinash took they would find that Barindra said that with the help of Abinash he started the *Yugantar*. Did Barindra say that Abinash helped him so far as the policy of the paper was concerned? Abinash might have procured subscribers and advertisements and that would be helping. So far as Abinash's connection with the *Yugantar* in 1907 was concerned there was no question for he was only acting as Manager.

The Chief Justice : Take the facts quite broadly. Here is a paper which is started, we know, in March 1906. We find a person unquestionably connected with it in 1907. Then there is a statement which we are entitled to take into consideration, and which indicates that that person's connection did not commence in 1907. Would it not be legitimate on those materials to say that that person was there in May, 1907, and that the matter which we are entitled to take into consideration together with the ordinary presumption about things in general go to show he was there in 1906?

Mr. Das : Your Lordships are taking the two together. Is there sufficient evidence for your Lordships apart from the question of belief or disbelief to raise that presumption? Unless there is that evidence your Lordships cannot look to the confession of Barindra because it is the statement of a co-accused. If your Lordships take the two together it will be so. The only piece of evidence on the record is that of Purna Chandra Lahiri who says that he saw Abinash in the "*Yugantar*" office in 1906.

Continuing Mr. Das said that for all that Abinash had done he might be charged with sedition but certainly not with conspiracy. Something more must be proved to bring him within the purview of section 121 A. Abinash then cut off all connection with the "*Yugantar*" for he feared a prosecution. The Crown had relied on Exhibit 990 which was a peon book to show the connection of Abinash with Indra Nath. Counsel submitted it was a very artificial connection. Various names appeared in the peon book. There was the name of the Chairman of the Corporation and Counsel did not know whether the Chairman of the Corporation could be charged with conspiracy.

After referring to other documents relied on by the Crown, Mr. Das submitted that it was an admitted fact that Abinash was the manager of the "*Yugantar*" for some time. He was the proprietor of the *Sadhana Press* where "*Yugantar*" used to be printed and he was thus the manager of the "*Yugantar*" during that

period. The next question was why Abinash left the "*Yugantar*." The answer was quite plain. The "*Yugantar*" was prosecuted and his mother did not allow him to have any connection with the "*Yugantar*." Then there were the two books "*Mukti, kon Pathe*" and *Bartaman Rananiti*. The first was the reproduction of a series of articles from the "*Yugantar*" and there was no prosecution in regard to those articles. *Bartaman Rananiti* contained a series of articles to which no objection could be taken. Counsel submitted that there was no evidence that Abinash published the book *Mukti kon Pathe*. It had been said by the Sessions Judge that Counsel for Abinash admitted the publication but it was a qualified admission.

Carnduff J. : You did not mention this in your opening.

Mr. Das : Yes, my lord, I did.

The Chief Justice . Then it rests with your admission in the Sessions Court.

Mr. Das : Absolutely, my Lord

Mr. Das . Mr. Woodruffe in his book also said that admission by Counsel is inadmissible

The Chief Justice . It cannot be any admission if it was made at the close of the case.

FORTY-THIRD DAY'S PROCEEDINGS.

Mr. Das continuing his argument referred to the "*Mukti Kon Pathe*" and said that on the 1st July the proof sheets of this book were found and seized by the police in the "*Yugantar*" office. No action was taken by the police for several months and thinking that there was nothing wrong Abinash published the book. Counsel was proceeding on the assumption that Abinash did publish this book. If his story was true, as he said, it was no evidence of conspiracy.

Carnduff J . Which story ?

Mr. Das : What I am stating now.

Carnduff, J : Assuming he did publish it.

Mr. Das : Yes. He is responsible for the publication but that in itself is not evidence of conspiracy. He published it for pecuniary gain. He rightly or wrongly thought that the police not having taken action for so many months it was not objectionable from their point of view. My learned friend's answer to that was that even if it was published for money that money was intended for nefarious purposes. There is no evidence of that. In fact the evidence is against that. Your Lordships don't find the sale proceeds of the "*Mukti Kon Pathe*" in the garden account books or in the account books found at 134 Harrison Road and 15, Gopi Mohan Dutt's

Lane. It is not clear on the evidence that his intention was to do something in furtherance of the object of this particular conspiracy. I admit that his action may be regarded with suspicion. One may be naturally inclined to give that interpretation to his action, but unless there is other evidence connecting him with the conspiracy that suspicion in itself is valueless. Is there anything in the introduction which shows such an intention as is necessary under Section 124A? It is merely an essay on the importance of what he calls aggregate, or conjoint action in which the individual must subordinate himself to the interests of the aggregate. The rest of the book consists of reprints from the "*Yugantar*." That is not disputed. I submit that there is nothing wrong in the object as stated by the man himself, namely, the ideal of freedom such as is contained in this introduction. Your Lordships will find the same ideal in many of the papers put in and many of the books published during that time.

Mr. Das then referred to the "*Bartaman Rananiti*" (modern art of warfare) and said that it was published on the 7th October, 1907. There was nothing in the book itself which showed that it was published in furtherance of the object of the conspiracy. There might be objectionable passages in the "*Mukti Kom Pathe*" in the articles reprinted from the "*Yugantar*", but there was nothing objectionable in the "*Bartaman Rananiti*" which was merely a scientific treatise. The whole of the "*Bartaman Rananiti*" was reprinted from the "*Yugantar*." His learned friend had said that one or two paragraphs had been added in the article. Assuming that was so there was nothing objectionable in those one or two paragraphs.

Carnduff J: The whole book is merely reprinted from the "*Yugantar*"?

Mr. Das: My learned friend's contention is that the publication of this book was in furtherance of the object of the conspiracy. I submit that that does not at all follow. It may merely be an expression of a man's feeling. It is not possible for you to have a correct idea of a writing of this kind unless your Lordships place yourselves in the position of the writer. I submit that the fact that "*Bartaman Rananiti*" has been found in the houses of some persons during the different searches is no proof of conspiracy.

Mr. Das next took up the case of Sailendra. He said there was no reference against this appellant in the garden. The evidence against him was his association with the "*Yugantar*" and with the Sil's Lodge. Apart from the assault on the Police, which had nothing to do with the present case there was no other evidence connecting Sailendra with the conspiracy. The evidence on record connecting the appellant with the garden was of such a character that their Lordships could not rely on it.

Counsel said that his observations on the evidence against Abinash applied with equal force in the case of Soilendra.

Referring to the case of Sudhir Mr. Das first of all drew their Lordships' attention to the confession made by the appellant. He admitted having assisted in the publication of the *Yugantar*. This confession was obtained by the police by inducement and pressure. But the confession did not show that he was a conspirator. Apart from this confession there was nothing in the evidence to show that Sudhir had agreed to the general objects of the conspiracy. The documentary evidence connecting him with the garden was no evidence of his complicity in the conspiracy.

Continuing Mr. Das said that Mr. Norton had referred to parcel No. 30 which went to Deoghar and was redirected to Calcutta. The two accounts, the Calcutta account and the Deoghar account in connection with the parcel, however, did not tally. As regards Sudhir's presence at the Sil's lodge it depended on oral evidence of two witnesses which looked suspicious. It had not been proved that he had ever been at the Sil's Lodge and even if it was proved, it did not show that he was a conspirator. Over and above that he was found not guilty by both the assessors and their Lordships would take that into consideration.

With reference to Abinash, Soilendra and Sudhir, Mr. Das submitted that the case against them was due more or less to the fact that the prosecution wanted to connect Arabinda through them.

Continuing Mr. Das said that he would next deal with the case of persons who were arrested outside the garden. He would begin with the case against Hem Chandra Das. With regard to this case the real difficulty was that both the Sessions Judge and Mr. Norton had begun with the confession and made that a foundation of the case whereas what should be done was that their Lordships would first consider the evidence, and if they found the evidence sufficient then they would turn to the confession. Taking the whole of the evidence as it was on the record it was clear that no case was made out against Hem Chander Das. So far as the watch witnesses were concerned the evidence was very meagre. Nothing incriminating was found in his house.

At this stage the Court rose for the day.

FORTY-FOURTH DAY'S PROCEEDINGS.

Mr. Das continuing his reply on behalf of the appellants said that in February, 1909, Nirapado was nineteen years of age. Both the Assessors found him not guilty, one of them being of opinion that the conspirators made use of Nirapado in doing very minor works. The Sessions Judge found him guilty under Sections 121

(A) and 122 and sentenced him to ten years' rigorous imprisonment. In this case Mr. Norton had first referred to the watch witnesses. Mr. Das submitted that the evidence of the watch witnesses was not reliable. Much had been said by the prosecution as to Nirapada's presence at No. 15, Gopi Mohon Dutt's Lane, he being arrested there on the 2nd May. Mr. Das submitted Nirapada had nothing to do with the house when he was arrested, he was sleeping outside the room, the door of which was locked from inside. Mr. Das next dealt with the documents. The first document used was the rent receipt, which did not mention Nirapada's name. His connection with the rent receipt depended upon the evidence of Manmatha Das. The question was whether their Lordships would rely upon the evidence of the man who never saw Nirapada either before or afterwards. It might be another case of honest mistake on the part of this witness. Further it had not been proved that Amarendra was another alias of Nirapada. Counsel submitted that Monmatha's evidence was very suspicious, and could not be relied upon. Counsel submitted that the evidence was not clear that Nirapada was a conspirator. Whether he knew anything or nothing at all was not clear.

The Chief Justice: Supposing he was at the garden.

Mr. Das: Even if he was at the garden, and that depends on the two incidents of the 20th and the 21st, it does not show how much he knew of the conspiracy. It may be the case, according to the view one of the Assessors has taken, that they used to make him do minor work.

Mr. Das then took up the case of the Sylhet brothers, Susil and Biren, and said that he would deal with the case of Susil first. His learned friend had referred to numerous documents in connection with Susil's case, but he ventured to submit that the issue lay in a very narrow compass. The first observation he desired to make in reply was that as a matter of fact there was no evidence in the case on which their Lordships could say that a particular document was found in the possession of a particular accused. So far as the letters were concerned the search list did not give their Lordships a clue or assist their Lordships in any way. Therefore it was impossible for any witness however strong his memory might be, when there were 700 to 800 letters, to say that a particular letter was found in the south house or the north house or the west house.

Carnduff, J: In which house was the bag found?

Mr. Das: In the south. There were eight letters in it.

The Chief Justice: Have you any authority on the question of possession?

Mr. Das : No. We always act upon the ground that there must be exclusive possession. I submit that is the law as laid down in the cases. There is an Allahabad case and other cases in point.

The Chief Justice : Of course if you can show joint possession that would be equally good. If you can show that a document is in the possession of A and B in the sense that it is in their joint possession then it is open as against A and B to show exclusive possession, but one must distinguish that from a case where the possession is ambiguous and has not been proved to be joint.

Mr. Das : That is exactly my submission.

The Chief Justice : I was trying to recall a case analogous on this point in the Weekly Reporter. It was a case, as far as I recollect, of murder.

Mr. Das : I will try to place that case before your Lordships to-morrow.

The Chief Justice : It bears on this principle of law that you cannot treat ambiguity as being the same as joint possession.

Mr. Das . In this country the leading case on the point is *Haribol Chunder's* case. There is this difference however, namely, that in that case the document was found in a box which belonged to the accused and he had the key.

Counsel then referred to the letters and said that he did not see how these letters could assist their Lordships in coming to the conclusion that Susil was a conspirator.

Counsel then asked their Lordships to consider the verdict of the Assessors, who found Sasil not guilty. Unless they found that the verdict of the Assessors was opposed to the evidence their Lordships would give effect to that verdict.

The Chief Justice : There is one thing. You did not say anything about the bamboo guns, daggers, etc.

Mr. Das : I would advise your Lordships to look at them.

Mr. Norton : You cannot kill a man with a bamboo gun, etc.

Carnduff J : They were there for the purpose of drilling.

Mr. Norton : Yes.

The Chief Justice : I understand that they are at Alipore †

Mr. Norton : Yes, I will get them up.

Mr. Das : It would be very bad thing for all of us if our boys should not have "Samitis" for physical culture because the *Yugantar* wrote about the "Samities."

Mr. Das then went on dealing with the case of Birendra Chandra Sen, who was only one year older than Susil. In this case also the same consideration arose as to what was the effect of the

documents that were found at Sylhet. A large number of letters were used against this appellant, most of which were no evidence against him. Mr. Das had not concluded when the Court rose for the day.

FORTY-FIFTH DAY'S PROCEEDINGS.

Mr. Das continuing his argument said that when the Court rose on Friday he was dealing with the case of Biren and had put before their Lordships the letter which was the most important and the most valuable. There were certain other letters to which reference had been made by his learned friend some of which were not evidence at all. If for instance their Lordships looked at exhibits 520-83 that was a letter written by somebody whose name did not appear, to Nogendro. Another letter 520-11 was written by a man named Probodh to Biren. Counsel referred to the other letters and said that these were all the documents found at Sylhet so far as Biren was concerned. His learned friend relied strongly on the two note books containing the names of chemicals and formulas for bombs. Whatever the value of these note books might be their Lordships could not find any evidence against Biren. Counsel was now referring to the evidence apart from the admissions to police officers. If the note books were found in the South house, as Counsel submitted they were, the evidence was clear and if the circumstances were such that they could not be attributed to Biren, the question at once arose why was it attempted to be proved by oral testimony that one of the note books was found in the canvas bag in close proximity to the black powder. That would not be a true statement. Why was that untrue or incorrect statement made except with a particular object? The object, Counsel submitted, was to make out or suggest the guilt of Biren. In the first place why was Biren arrested? They were told that Biren was arrested because he, along with other boys shouted "Bande Mataram." It was not till then that Biren was arrested. It was for their Lordships to judge how far the defence had made good that suggestion. Counsel referred their Lordships to the evidence on this point and submitted that it had not been made out that these note books were attributable to Biren. Then again the contents of the note books themselves did not show that they had anything to do with the conspiracy with which Biren was charged. Mr. Das then referred to the Judgment of the Sessions Judge and said that on the findings of the Judge Biren was entitled to an acquittal.

Mr. Das then dealt with the case of Bal Krishna Hari Kane. In connection with this case the first point taken by the prosecution was that Kane's name was mentioned by Barin. The prosecution also referred to the evidence of Purna Chandra Biswas, which was

utterly unworthy of credit. If their Lordships believed the whole evidence it might very well be a case of mistaken identity.

Continuing Counsel said that both the Assessors acquitted Kane and they were quite right in their opinion.

Mr. Das next dealt with the case of Krishna Jibon Sanyal. So far as his confession was concerned the prosecution had admitted that it was not sufficient to bring home the guilt. So far as the evidence was concerned they all knew that this appellant left Giridhi about the 10th or 12th April and Ex. 853 showed that at any rate Krishnajiban at that time intended to go home. Further they found this appellant at the garden for a few days. There was also evidence to connect him with No. 15 Gopi Mohon Datt's Lane but that depended on the evidence of Naren Mullick, who said that he saw Krishnajiban only once but in his report to Inspector Biswas Naren Mullick did not mention Krishnajiban's name. The Sessions Judge did not attach any importance to the garden exhibits and no body knows as to who wrote them, when and under what circumstances. With regard to the copy of the Bengali grammar bearing the name of the appellant found at 15. Gopi Mohan Dutt's Lane, the prosecution suggested that Krishnajiban must have gone from the garden to 15 Gopi Mohan Dutt's Lane. Mr. Das submitted that his answer to it was that in the first place the Sessions Judge did not attach much importance to it and secondly, it might be one of the documents found at the garden, got confused and mixed up with the exhibit found at No. 15, because in this exhibit Mr. Feny's name was scored through in pencil. With regard to the finding of 39 copies of the "*Jugantar*" of different dates at Krishnajiban's house at Maldah, Counsel said that Krishnajiban was a subscriber to that paper. In conclusion Counsel submitted that no offence had been made out against Krishnajiban.

The next case that Mr. Das desired to deal with was the case of Paresh Maulick. As regards his connection with the place of conspiracy the prosecution relied on the evidence of Satish, which was very general and that witness did not mention the name of any incident.

The next appellant was Sishir Kumar Ghose. It was admitted by the prosecution that Sishir had nothing to do with bombs. The case against him, however, was that he was an active member, that is to say, a missionary with full knowledge. The question was whether that had been made out to their Lordships' satisfaction. The prosecution first dealt with the state of his mind, then with his connection with the garden and lastly with his connection with the principal members of the conspiracy. However there was no evidence throughout on the record to show what work was done by Sishir.

Here the Court rose for the day.

FORTY-SIXTH DAY'S PROCEEDINGS.

Mr. Das continuing his reply on behalf of the defence said that he would first deal with the law points. From the petition it was evident that the case for the prosecution was limited to a conspiracy to wage war. In this connection he would draw their Lordships' attention to the charges; the first three charges were under Section 121, and the fourth charge was under section 121 (A). Therefore the charge was also limited to the specific charge of waging war and that was the object of the conspiracy. The subsequent paragraphs of the charge all go out because they were superfluous having regard to the petition.

The Chief Justice: The charges as originally framed created no difficulty.

Mr. Das: No my Lord.

The Chief Justice: The great point that you make now are the words "as set forth." These words create the difficulty. But those words were not in the original charge.

Mr. Das: Yes. But the charge is gone now.

Mr. Norton: The petition has no reference to the charge.

Mr. Das: The fifth and sixth charges in my learned friend's petition were not seriously relied upon.

Continuing Mr. Das said that the charges under Sections 121, 121(A) and 122 were put in the alternate form and if they said that whatever was done by 'the appellants amounted to the waging of war then there was an end of the conspiracy. If there was an end of the conspiracy Section 10 had no application at all.

Mr. Das then went on to deal with the question of the misjoinder of the charges.

The Chief Justice: You need not trouble yourself about this point, nor about Section 121. If we think it necessary we will call upon you to answer upon those points.

Dealing with the question of privilege as to the use of Police Diaries Mr. Das said that he did not understand under what section the Crown claimed that privilege. The section quoted was 162 of the Evidence Act, but section 162 had no application to matters like that. It was also said that the Crown relied on section 173 of the Criminal Procedure Code. That section also could have no application.

Mr. Das then referred to the statement taken before Mr. Beachcroft and said that it was admitted that the provisions of section 364 were not complied with. Reference, however, was made to section 533 and then to section 537. As regards section 533 it

had no application whatever, because it referred to a statement taken by a Magistrate. With regard to section 537 he failed to see what application it could have because he had not gone the length of asking their Lordships to hold that the whole trial was vitiated by reason of these statements.

Two other questions remained, namely, that of the admissibility of the confessions and the operation of section 10 of the Evidence Act. As regards the operation of section 10 his learned friend had referred to several English cases. Mr. Das briefly dealt with these cases and submitted that the principle laid down in these cases was not applicable to the present case. With regard to the admissibility of the confessions he desired in the first place to point out that section 19 of the present Code did not contain anything which was not also contained in the Act of 1872.

The Chief Justice : It does not contain the binding clause.

Mr. Das : That is so, but it contains all the other matters.

Counsel referred to and read sections 140, 141 and 142 of the Code of 1872 and raised the question whether the circumstances were such that their Lordships would on petition set aside the proceedings as being without jurisdiction. After reading the evidence bearing on this point, Counsel submitted that upon the facts disclosed in the evidence it was perfectly clear that the Magistrate took cognizance on the 3rd May.

Having regard to the fact that the Magistrate himself admitted that he took cognizance, his want of jurisdiction was clearly made out. In these proceedings Mr. Birley was regarded not as a Magistrate who had no jurisdiction but as a Magistrate who recorded the confessions. Further, Mr. Birley was not the nearest Magistrate to whom these men could have been taken.

Carnduff, J. Who was the nearest Magistrate ?

Mr. Das : The Magistrate of Sealdah or the Chief Presidency Magistrate of Calcutta.

Continuing Counsel said that the only question that arose on these facts was whether the report of Inspector Gupta on which these fourteen men were sent up could be regarded as a police report under clause (b) of section 190. There was nothing in the language of that section itself which said that such a report could not be regarded as a police report. The word " police report " was nowhere defined. In support of his argument Counsel cited two cases reported in 29 Calcutta, page 417 and in 8 Calcutta Weekly Notes, page 864.

Mr. Das then went on to deal with the confessing prisoners. He first dealt with the case of Hrishikesh Kanjilal. On the evidence no case had been made out against Hrishikesh. The only witness

to which the prosecution had referred to show his connection with the garden and 4, Harrison Road, was that of Satish, whose statement was general, and who mentioned no incidents. Moreover, Satish added the name in the course of his cross-examination. Turning to the documentary evidence they had Ram Chandra Prabhu's letter, which was found in the garden in a shirt with the letter "R." It was not in evidence that the shirt was claimed by Hrishi Kesh and the word "R" did not appear in the search list. Moreover, Hrishikesh's name did not begin with the word "R."

The Chief Justice: I understand it is "Hr."

Mr. Norton: If you spell it in English you must begin with 'R.'

Mr. Das: No. In some places on the evidence the Judge himself spells it with "Hr". A European Magistrate may spell it with 'Ris' but a Bongali will hardly spell it with "R."

Counsel then referred to several other exhibits and said that there was nothing in the documentary evidence to show that Hrishi Kesh was a member of the conspiracy.

Mr. Das then said that he did not desire to refer to the merits of the cases of other confessing prisoners, because their Lordships had got all the facts.

Counsel next went on to deal with the confessions of all the confessing prisoners. He did not desire to say that these confessions were untrue. He desired to urge two points with regard to the confessions, *viz.*, (1) about a far-off revolution and (2) the question of overt acts.

About the revolution to which Barin referred, Counsel's submission would be this. With regard to other criminal offences there was such a thing as *locus penitentiae*, and their Lordships would have to consider in this case whether that point had passed, that is to say, whether they had actually committed the crime or that they were thinking of committing the crime. The intention to have a revolution far-off showed that it was not an offence under section 121 (A) and as such there was *locus penitentiae*. From the evidence it was clear that these prisoners were yet at the first stage, preaching ideals, after which would come the collection of arms and then the rebellion. Could it not be argued in this way that after going through the first stage they might have thought of not proceeding any further? As long as something more specific was not done, Counsel submitted, the offence under section 121(A) was not complete. The prisoners could yet draw back and therefore the offence did not come under section 121.

With regard to the overt acts, Mr. Das submitted, that these were not overt acts directly connected with the

conspiracy. Assuming the charge to be one of conspiracy to wage war the overt acts did not show the character of the conspiracy. They were accidental offshoots. Barin said that he never thought that political murder would ever bring independence. Barin, according to the prosecution, was a truthful person. It was not his object to make any untrue statement and he never intended to palliate what he had done and his intention was perfectly clear on the point. Yet the whole scheme was represented to bring independence.

Continuing Mr. Das said: On the question of sentence, assuming that your Lordships are against me on other questions, I desire to point out this, that it is not true that it was Barin, who created the spirit of nationalism in the country which ultimately led to this conspiracy. My submission before your Lordships will be that it is Barin and these people, who were caught up in the main stream of nationalism, and not actually creating it, and in dealing with this case I should ask your Lordships to keep the facts of nationalism generally and Swadeshi and other enterprises apart altogether from the question of their guilt. This is necessary in order to understand how the very recklessness of their youth led them to this course which may come under section 121 (A). In this connection I may place before your Lordships an article which appeared in the *Bande Mataram*, so that your Lordships may view the actions of these different accused persons in their proper light before considering the question of sentence. This article was written on the 16th October 1906 on "the nation day" and that will explain the conduct of many of the accused persons with reference to the act of 1st October. It shows that the spirit, which prompted the observance of the nation day and the different steps which were taken in connection with that, are perfectly independent of any other circumstances. I desire to place this article and it will show the spirit in which it was accepted by the people.

Mr. Das then read the article.

Mr. Norton: Is this evidence? This is not a statement made by a conspirator?

The Chief Justice: This is on the question of sentence, Mr. Norton.

Mr. Das continuing said: Wherever your Lordships would come across any evidence having reference to this "nation day" I would ask your Lordships not to put it down to bomb conspiracy.

There is another point of view which your Lordships will consider in connection with this and it is the ardent patriotism of these men and the very keenness of their desire for freedom probably which led them astray and in considering the question of sentence your Lordships will consider that much of it was due to

the impulses of their boyish years and carelessness of their youth. I would ask your Lordships not to pass a sentence which would crush their lives for ever. Their acts were undoubtedly worthy of severe condemnation but in them there were many virtues, many qualities, which came to light. If they are guilty of the deeds, which were imputed to them, they had also many virtues in them and in passing sentence your Lordships will take them into consideration. I appeal in the name of their youth, which led them astray, that your Lordships will not pass a sentence which will crush their lives for ever. There is much good in them and there is no reason to suppose that when they will come back they will do the same thing again. They yet may be made useful members of the society which they have wronged. They yet may serve that very State against which the offence was committed. I appeal to your Lordships not to inflict severe sentence on them. If law is to be vindicated let it be vindicated by all means but my earnest appeal to your Lordships is let justice be also done.

MR. CHUKRAVARTI'S REPLY.

Mr. Chuckerverti, who appeared on behalf of Indra Nath Nandi, then replied. He confessed that he had been somewhat disappointed in the way in which Mr. Norton presented the case with regard to his client, before their Lordships. Counsel had some difficulty in finding out which part of the evidence Crown relied upon for the purpose of first establishing that there was a reasonable ground for supposing that Indra Nath was a party to the conspiracy, because that had to be established not by the acts or statements of Indra Nath's so-called co-conspirators. There could not be any question with regard to that. In order to prove that Indra Nath was a party to the conspiracy, Mr. Norton had referred to the Jamalpur incident and he strenuously argued before their Lordships that the judgment of the Magistrate in connection with the binding down of Indra Nath was admissible in evidence. It was not a statement of either Indra Nath or any of his alleged co-conspirators. The judgment could only be put in under the provision of section 43 read with Section 14. So far as Counsel could follow, that was Mr. Norton's argument. Mr. Chuckerverti then read Sections 43 and 14 of the Evidence Act and said the judgment should not have been treated as evidence in the case.

Counsel had not concluded when the Court rose for the day.

FORTY-SEVENTH DAY'S PROCEEDINGS.

Mr. Chuckerverti continuing his argument on behalf of Indra Nath Nandi submitted that Indra Nath's connection with the

conspiracy was due mainly to his connection with Tara Nath Rai Chowdury who was described by the Crown as an absconder and proclaimed offender. It was clear from the evidence that Tara Nath became the Manager of the *Yugantar* in November 1907. He was never the Editor, Printer and Publisher of that paper. He simply collected money on behalf of the paper and made payments. It had been suggested by the Crown that there were grounds for reasonable suspicion against him that he was a conspirator.

The Chief Justice : Not reasonable suspicion I think ?

Mr. Norton : Reasonable ground for suspicion.

The Chief Justice : No reasonable ground for suspicion.

Mr. Norton : Yes, My Lord, that is so.

Continuing Mr. Chuckerverti said, let them see what evidence there was first to raise a reasonable belief that Tara Nath was a conspirator and secondly to establish Indra Nath's connection with Tara Nath and thereby to connect Indra Nath with the conspiracy. Although searches had been made from time to time in the *Yugantar* office Tara Nath was never said to be the author of those violent articles which appeared in the *Yugantar* or that he had anything to do with the policy of the paper. Tara Nath had been described as a conspirator and absconder. Except that a warrant was asked for and granted and a bit of Purna Chunder Lahiri's evidence, there was nothing to show that Tara Nath had done anything to merit his arrest as a conspirator. Purna Chunder Lahiri in his evidence said that he searched Tara Nath's house on the 19th May on certain information he had received in the Chief Presidency Magistrate's Court. Tara Nath was proclaimed as an absconder under the Arms Act. The search warrant and the arrest warrant were issued by the Chief Presidency Magistrate. On the day Tara Nath's house was searched Tara Nath was seen in Court and his person was searched. From the day his house was searched Tara Nath was not seen any where.

Mr. Chuckraverti next submitted that except referring to this portion of Purna Chunder Lahiri's evidence the Crown did not submit anything to meet the argument advanced by the defence Counsel. Tara Nath was supposed to be a conspirator for large quantities of arms and amunition were found in his house on the 19th May. It was incredible to believe that a man whose person was searched at the Police Court was allowed to go away. Then again why did Purna Chundra Lahiri go to Raja's Lane to search for Tara Nath ?

The Chief Justice : Do you know the dates on which the warrant was granted ?

Mr. Chuckerverti: No. Except that on the 13th July an application was made for a warrant to Mr. Birley. This search warrant and arrest warrant were issued by the Chief Presidency Magistrate under the Arms Act.

The Chief Justice: We know nothing of the other warrant.

Mr. Norton: Except the police evidence which says Taranath was not found.

Mr. Chuckerverti: In the order sheet there is only a note which says that a warrant was issued. Is it suggested that Purna Chandra Lahiri or any other police officer was in charge of the warrant to arrest Tara Nath? With regard to the warrant Purna Chandra Lahiri says it was issued under the Arms Act; that does not implicate him with the conspiracy.

Mr. Norton: In Mr. Birley's order sheet we find that on the 4th September a proclamation was issued against several men amongst whom was Tara Nath.

Mr. Chuckerverti continuing said that the only man who said that the box in which the arms were found belonged to Tara Nath was Gnanendra Nath Sircar. He was a private tutor and after the search he was arrested and kept in *hajat* until he incriminated Tara Nath. Excepting this man there was no other evidence against him. Although the enquiry began as early as February none of the shadowing witnesses ever suggested that they saw Tara Nath either in the garden or any other place of conspiracy. Even those witnesses who had sworn against anybody and every body did not swear against Tara Nath.

Mr. Chuckerverti then referred to the comparison of handwriting and said that the comparison took place in the absence of the accused. Where the trial was with the assistance of two Assessors the defence were entitled, especially where the comparison of Bengalee handwriting was concerned, to have the opinion of the Assessors one way or the other. Even assuming that the Sessions Judge was entitled to admit documents by comparison of handwriting the Court consisted of three persons, Judge and the two Assessors and so there was no comparison by the Court.

Carnduff, J: The Assessors made no comparison at all.

Mr. Chuckerverti: No. Up to the end the Sessions Judge was in doubt as to whether these documents should be admitted or not. At the end of the whole trial he made up his mind and admitted these documents.

Mr. Norton: Every one of these documents was put into the hands of the Assessors for the purpose of their coming to an opinion on them. That is a fact.

Counsel then went on to say that their Lordships were asked to find that Indra Nath was the armourer to the garden. It was suggested that Colonel Nandi being exempted from the operation of the Arms Act Indra Nath went into the market and bought arms and ammunition, in the name of his father and made them over to the garden people. There was not a tittle of evidence to support that suggestion. It was a pious desire on the part of the prosecution that their Lordships should come to that conclusion without any evidence at all.

Mr. Chukerverti next referred to the injuries on Indra Nath's person and asked what it was that the prosecution wished their Lordships to deduce from the fact of the injuries in support of the story that Indra Nath was a conspirator. The arrests at the garden took place early on the morning of the 2nd May and was it conceivable that a few days later Indra Nath in broad daylight was engaged in preparing arms and had one hand blown off and received other injuries owing to an explosion? The prosecution had to prove how this explosion was connected with the conspiracy with which Indra Nath was charged.

Mr. Chukerverti continuing said that the Crown had suggested that because *Yugantar* was considered as a limb of the conspiracy, everybody who had anything to do with the paper was considered as a member of the conspiracy. Then again it had also been suggested that "*Chatra Bhandar*" was a limb of the conspiracy. Counsel submitted that he had very carefully listened to what the learned Counsel for the Crown had said about the "*Chatra Bhandar*" but he failed to find out any tangible evidence which made the "*Chatra Bhandar*" a limb of the conspiracy. In some mysterious way Indra Nath was supposed to be a representative of the conspirators on the board of the "*Chatra Bhandar*" as a secretary. Except the association which had been made by the prosecution, there was absolutely no evidence at all on the record to support this. Counsel submitted that with regard to "*Chatra Bhandar*" not only was it never suggested that it was a limb of the conspiracy as long as the case was before the committing Magistrate, but that no search was made at the "*Chatra Bhandar*" office until the 8th of December during the pendency of the trial before Mr. Beachcroft. Mr. Norton had stated that the documents taken from the "*Chatra Bhandar*" office were all official documents and they bore the name of Indra Nath. From that their Lordships were asked to hold that "*Chatra Bhandar*" was a limb of the conspiracy and Indra Nath was told by the conspirators to represent them on the "*Chatra Bhandar*". Although those documents were not found in the possession of Indra Nath and although they were not in the handwriting of Indra Nath still, Mr. Norton had submitted that those documents might be used as evidence under section 10 of the Evidence Act. Counsel remarked

that the position taken by the Crown on this point was absolutely untenable.

After dealing with some other minor points, Counsel concluded his reply on behalf of Indra Nath Nandi.

Mr. Norton pointed out that in Mr. Birley's commitment order the name of Indra Nath Nandi appeared.

He was the thirty-sixth accused there. Counsel also referred to the note-book about the handing over of the revolver.

Mr. Norton then produced the Sylhet arms which consisted of bamboo guns with bamboo spears, bamboo swords, air guns, lathis, bow, etc.

The Chief Justice.—This is the armoury.

Mr. Norton.—Yes, my Lord.

The Chief Justice,—Do you think they are dangerous ?

Mr. Norton :—No, unless they strike the eye.

The Chief Justice : Are they taken from the “ Bartaman Rana Niti ? ” (Laughter).

The Chief Justice then thanked all for the great help rendered by them in this case.

Their Lordships reserved judgment.

IN THE HIGH COURT OF JUDICATURE AT FORT
WILLIAM IN BENGAL.

The 23rd November 1909.

CRIMINAL JURISDICTION.

Present :

THE HON'BLE SIR LAWRENCE HUGH JENKINS,
Knight, Chief Justice.

AND

THE HON'BLE MR. JUSTICE CARNDUFF.

JUDGMENT.

Jenkins, C. J., after some preliminary remarks, said :—We are asked to hold that the appellants were all members of a secret Society, and joined in this unlawful enterprise ; that they collected arms and ammunition with the intention of waging war against the King ; that they with others, known and unknown, conspired to wage war against the King or to deprive him of the Sovereignty of British India ; and finally that they actually waged war against the King.

The period covered by the charge is described therein as “on or about 12 months preceding the 15th of May 1908” and the scene of the offences charged is laid at “various places in Bengal including 32, Muraripukur Road.”

It is said that the police came to hear of the Society and its workings first in October 1907, and then in January 1908. In the month of March 1908 the work of watching the members of the Society began, and thereafter a close observation was kept on their movements between various places and in particular the Garden, 15, Gopi Mohun Dutt's Lane, 134, Harrison Road, 4, Harrison Road, 23, Scott's Lane, 38-4, Raja Nava Krishna Street and 48, Gray Street, all of which, except the Garden, are in the town of Calcutta. The action of the police was precipitated by the murder on the 30th of April 1908 at Mozufferpore of 2 ladies,

Mrs. and Miss Kennedy, by the throwing of a bomb, the culprits being Khudiram Bose and Profulla Chaki, of whom the first has paid the extreme penalty of the law, while the other escaped punishment by committing suicide as he was on the point of arrest. This shocking outrage rendered delay no longer possible, and after a conference of leading officers, the police in the early morning of the 2nd of May, armed with search warrants, entered the Garden and the several places of conspiracy in Calcutta, arrested the inmates, and took possession of the documents and articles they found.

* * * * *

In support of the appeals before us the appellants have urged that the convictions are bad in law, and further that they are not justified by the evidence on the record. In a case so voluminous innumerable arguments would naturally arise on one side and the other, and though many from their transient character must pass unnoticed in this judgment, all have been carefully considered and weighed. First, then, I will deal with the several legal objections that have been advanced against the convictions now under appeal.

I need not discuss at length the contention that the right to trial by Jury could not be taken away by the Criminal Procedure Code. The argument rests on the proviso to Section 22 of the Indian Councils Act, 1861, whereby it is declared that the Governor-General in Council shall not have the power of making any law which may affect any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom.

But the point has been determined adversely to Mr. Das' contention in a recent decision of this Court by which we are bound. Therefore we must overrule this objection.

The next objection taken is that Barin being a European British subject the Magistrate was bound to commit him to the High Court in accordance with the provisions of Section 447 of the Criminal Procedure Code, and that the rest of the accused should have been similarly committed in compliance with Section 452.

Criminal proceedings against European British subjects are regulated by Chapter XXXIII of the Criminal Procedure Code, and provision is made in that Chapter for the tribunal before which a person answering that description can be tried and as to the sentence that may be passed. It is conceded by the Crown that it became apparent on the face of the proceedings in the course of the enquiry before the Committing Magistrate that Barindra Kumar Ghose was a European British subject, but it

has been held that he waived his right to be treated as such. This, it is contended by Mr. Das, is erroneous.

After referring to sections 447, 449, 452 and 454 Cr. R. P. His Lordship observed :—

On the strength of these sections it is contended (1) that Barindra Kumar Ghose could only be committed to the High Court; (2) that his co-accused too could only have been so committed; (3) that there can be no waiver of a want of jurisdiction apparent on the face of the proceedings; (4) that sections 453 and 454 could have no application where, as here, the status of European British subject is manifest and not open to doubt; (5) that there has been no waiver by Barindra; (6) that if there was a waiver in fact, then it was not after he was made fully acquainted with all that he was giving up; and (7) that in any case there was no waiver by his co-accused.

Though I recognise the force of Mr. Das' argument I hold that on the first 4 points we are concluded by the decision of a Bench of this Court in *R. Vs. Quiros*, I. L. R. 6, Cal. 83, and I do not think what was then said can be regarded as mere *obiter dictum*. What is *obiter dictum* is sometimes difficult to decide, but a valuable guide to the solution of this difficulty is furnished by Lord Halsbury L. C. in *Watts Vs. Assets Company*, L. R. 1905 A. C. at page 330 where he said, "When a learned Judge is giving his views why this or that does not come within the meaning of the law which makes a thing inoperative, and when he distinguishes the case before him by pointing out there was no fraud and therefore the fraud imputed did not exist, I very much doubt whether that is one of those things which can be described as a mere *obiter dictum*. It is part of the law which is guiding his judgment and part of the law he is bound to expound in the judgment he is pronouncing." In the light of these remarks I am of opinion that what was said in the course of the judgment in *Quiros' case* is more than mere *obiter dictum*: it was an exposition of the law necessary for the judgment then pronounced. Moreover, what was then said has been repeatedly adopted as the basis of subsequent decisions; and we further find that since the judgment in *Quiros' case* the language on which it was based has been repeated in the Criminal Procedure Codes of 1882 and 1898, and this is a legislative recognition which we cannot disregard. In the light of this decision I am of opinion that Barin could not relinquish his right to be dealt with as a European British subject, and on the facts I hold that he actually did relinquish this right.

From this it follows that the plea is of no avail either to Barin or his co-accused, and that the Court of Sessions had complete jurisdiction to dispose of the case.

It is next argued that there was no jurisdiction to take cognizance of the several offences of which the accused have been found guilty, that is to say, of offences under Sections 121, 121-A and 122 of the Indian Penal Code.

It is provided by Section 196 of the Code of Criminal Procedure that no Court shall take cognizance of any offence punishable under Chapter VI of the Indian Penal Code.....unless upon complaint made by order of or under authority from the Governor-General in Council, the Local Government, or by some officer empowered by the Governor-General in Council in this behalf. The authority in this case has proceeded from the Local Government. This objection has been taken on behalf of the appellants belonging to what has been called the first batch, against whom a complaint was preferred under the order or authority of the Local Government on the 17th of May 1908, (Exhibit 1). It is in these terms—"Whereas it has been made to appear to His Honour the Lieutenant-Governor of Bengal that there is reason to believe that during a period commencing from about the 16th October 1905 to date at Maniktollah (32, Murrari-pooker Road, Calcutta) and other places the following persons have committed offences punishable under Sections 121-A, 122, 123 and 124 of the Indian Penal Code, Babu Purna Chunder Biswas, Inspector of Police, Criminal Investigation Department, Bengal, is hereby ordered and authorised by His Honour the Lieutenant-Governor of Bengal under the provisions of Section 196 of the Code of Criminal Procedure to prefer a complaint against and to prosecute these persons, namely: " (then after setting out a list of names in which are included the names of the appellants in the first batch, the document proceeds) "for the said offences under Sections 121-A, 122, 123, 124 of the Indian Penal Code or under any other Section of the said Code which may be found to be applicable to the case.

By order of His Honour the Lieutenant-Governor of Bengal,

E. A. GAIT,

(Chief Secretary to the Government of Bengal.)

17th May 1908.

On the 19th of May a complaint was preferred in the form of an allegation made in writing to Mr. Birley and after naming (amongst others) the appellants in the first batch the complainant Purna Chunder Biswas submitted his complaint "charging the members of the Secret Society under Sections 143, 145, 150, 157, 121, 121-A, 122, 123 and 124, of the Indian Penal Code."

On the same day Inspector Purna Chunder Biswas was examined on solemn affirmation on his complaint and stated

that sanction has been given to him by the Government of Bengal to prosecute certain persons under Sections 121-A, 122, 123, 124, Indian Penal Code. Then after alleging that he complained against the 33 persons named in the Local Government's order and describing their several arrests he proceeded in these terms.

"These persons are all accused of organising a gang for the purpose of waging war against the Government and overawing the Government by means of criminal force."

On the strength of this authority or order and complaint the Magistrate, after he had completed his enquiry, committed these appellants for trial to the Court of Sessions for offences under Sections 121, 121-A and 123 of the Indian Penal Code.

In the Court of Sessions objection was taken on behalf of the accused to the charge under Section 121, Indian Penal Code and thereupon Counsel for the prosecution informed the Court that he would file a fresh sanction, as he called it, in respect of that section, though he did not admit that the original sanction was insufficient.

He subsequently produced what was described as a sanction given by the Local Government under Section 196 of the Criminal Procedure Code and in compliance with his application the Court framed charges under Sections 121 and 122, Indian Penal Code.

The sanction here referred to was an order and authority in the terms of that of the 17th of May which I have already cited save that it mentioned Section 121 of the Indian Penal Code in addition to the other sections set forth in the earlier authority. It was filed on the 19th of October 1908.

Two points thus arise : first, was a complaint under Section 121 of the Indian Penal Code authorised by the Local Government, and secondly, was a complaint in fact preferred under that section ?

Section 196 of the Criminal Procedure Code reserves to the Local Government (among others) the power of determining whether cognizance shall be taken by the Court of any offence punishable under Chapter VI of the Indian Penal Code except Section 127.

Seeing that this chapter deals with offences against the State the policy of this safeguard is manifest ; the maintenance of this control is of the highest importance ; and it is beyond the competence of the Local Government to delegate to any other body or person this controlling power and the discretion it implies.

The question whether action should be taken under Chapter VI is more than a matter of law ; considerations of policy arise and these can only be determined by the authorities specially designated in the section.

It further appears to me to be the true implication of Section 196 that the judgment of the Local Government should be specifically directed to the particular sections of Chapter VI in respect of which proceedings are to be taken, and that the order or authority should be preceded by, and be the result of, a deliberate determination that proceedings should be taken in respect of a particular section or particular sections of the Chapter and no other.

It would, I think, be opposed to the true intendment of Section 196 for the Local Government by its order to give its legal or other advisers a roving power to determine under what sections of the Chapter proceedings should be taken, and to abandon to them the discretion and responsibility that properly belong to itself ; and I should hesitate to take a view of this section that might permit the Government to entrust to the zeal of an advocate or of those by whom he may be instructed, the determination of the serious questions involved.

To turn from these general observations to the language of the order of the Local Government, can it be fairly said that it permits a complaint of an offence under Section 121, Indian Penal Code ?

This order was passed on the 17th of May and at that time some of the most prominent of the persons arrested had made their confessions, and though the Local Government had not before it all the evidence that was afterwards adduced, it must have been aware of the facts on which reliance is now placed as constituting an offence under Section 121.

And yet the order does not specify that section.

It recites that it had been made to appear to His Honour the Lieutenant-Governor of Bengal that there was reason to believe that the appellants (among others) had committed offences punishable under Sections 121-A, 122, 123 and 124 of the Indian Penal Code. It had not been made to appear that there was reason to believe that they had committed offences under Section 121.

Then again the order does not mention Section 121, but only those specified in the recital. Can it in these circumstances be reasonably contended that on a true reading of this order it was intended to cover Section 121, Indian Penal Code ? I think not. It is not as though this section had been overlooked, for it is the leading section of the chapter and is concerned with the most serious offence of all. I cannot read the recital

to the order without coming to the conclusion that it had not been made to appear to His Honour the Lieutenant-Governor of Bengal that there was a reason to believe an offence had been committed under that section, nor can I suppose that this view was not the result of careful deliberation.

In the face of these facts I decline to impute to the Local Government the sense of irresponsibility which is involved in the argument advanced by Counsel that an authority was intended to be given in respect of an offence under Section 121 which in the view of that Government there was no reason to believe had been committed. It is true that the order winds up with the words "or under any other section of the said Code which may be found to be applicable to the case." But found by whom? The order does not explain. It can hardly mean 'by the Court,' as it relates to the complaint; and if it means, found by anyone other than the Government, then it involves a delegation which cannot be sustained.

It is to be noticed for what it is worth that, in later documents, the Local Government expressly mentioned Section 121, and that in his sworn statement which followed on the Local Government's order it is distinctly said by the complainant that sanction had been given to the complainant by the Government of Bengal, "to prosecute certain persons under Sections 121-A, 122, 123, 124, Indian Penal Code", and no suggestion is made of an authority to prosecute under Section 121. Moreover Mr. Norton, after his argument came to the notice of the Local Government, informed us that he was instructed to state that the Local Government did not desire him to argue that it was its intention to include Section 121 of the Indian Penal Code in their order of the 17th of May. For the foregoing reasons I hold that the order of the 17th of May did not authorise a complaint under Section 121 of the Indian Penal Code.

But then it has been argued by Mr. Norton that any defect in the procedure of the Magistrate's Court has been cured by a sanction obtained from the Local Government while the case was before the Court of Session. But under Section 196 the only order or authority within the competence of the Local Government is one that permits a complaint; the order actually passed was that there should be a complaint; and in fact it appears that no complaint was made. It is clear therefore that the so-called sanction on which Mr. Norton relied before the Court of Session, and has again relied here, is absolutely valueless.

Finally it is contended that any defect in the commitment was cured by Section 532 of the Criminal Procedure Code, and as authority for this, reference has been made to *Queen Empress vs.*

Morton, I. L. R. 9 Bombay 268, Queen Empress *vs.* Tilak, I. L. R. 22 Bombay 112.

The decision of Queen Empress *vs.* Morton turned on a consideration of Sections 197 and 532, and to appreciate what was actually determined regard must be had to the terms of the first of these sections, which differs materially from Section 196.

Section 197 makes the power of cognizance dependant on sanction, and the defect in Queen Empress *vs.* Morton was that there was no sanction for the magisterial enquiry, so that in committing the accused to the High Court the Magistrate purported, "to exercise powers duly conferred which were not so conferred." The High Court however had (apart from this defect) power to take cognizance of the offence as before the trial the necessary sanction had been obtained.

Here however there has been a want of jurisdiction not only in the Magistrate, but also in the Court of Session, for at no stage have the conditions of Section 196 been satisfied.

It is true that in Queen Empress *vs.* Tilak, I. L. R. 22 Bombay, a learned Judge holding the High Court Sessions in Bombay expressed an opinion that the decision in Queen Empress *vs.* Morton was binding on him though he was then concerned with a case to which Section 196 was applicable.

But it is to be noticed that this was the decision of a single Judge given in the course of argument and without advertng to the fundamental distinction between the two sections. To borrow the language of Sir Barnes Peacock in Queen Empress *vs.* Navad-wip, 15 W. R. Cr. at page 73ⁿ, the decision in Tilak's case, was "in the nature of a *nisi prius* decision by which Courts sitting in Banco do not consider themselves bound." Moreover a different view has been taken of the position by a bench of the Punjab Chief Court (Shamshul Khan's case, 25 P. J. Rev. No 1633).

The result then is that the Court of Sessions had no jurisdiction to convict the appellants in the first batch under Section 121. But I think it right to add that this conviction does not fail merely on the lack of jurisdiction, for on the merits too I should have held that no offence under that section has been proved.

In respect of the offences under Sections 121-A and 122 of the Indian Penal Code, I hold there was a good and sufficient authority under Section 196 of the Criminal Procedure Code, and an earlier decision of a bench of this Court furnishes an answer to the objection to the sufficiency of the signature of the Chief Secretary on the document containing the authority (Apurba Krishna Bose *vs.* Emperor, I. L. R. 35 C. 141.)

Though it was at the outset objected that the charges were bad for multifariousness, in the end this was not pressed, and I think

rightly, for, though the charges as ultimately framed are not happily expressed, I think on a fair reading of them they merely purport to place before the Court different aspects of the same transaction. And I further think we should be applying to the charges, as ultimately framed, too strict a reading and too limited a meaning, if we were to give effect to Mr. Das' argument that the fourth head is limited to a conspiracy to wage a war which according to the first head had been already waged, or if we were to limit the fifth head by reference to the language of the fourth.

As in the view I take the charge under Section 121 can not be sustained, Mr. Das' objection that he was not allowed to cross examine the witnesses on the charges as reframed falls to the ground, for on his own statement this objection would have no force in reference to the charge under Section 121-A., and it is with that section alone we are now concerned. I also hold that the objection to the proceedings on the ground of misjoinder of parties is not well founded and must fail.

Having thus disposed of the several objections to the legality of the present proceedings, I will deal with the merits, but, before discussing the details of the individual cases, it will be convenient to take up certain general questions that call for consideration and decision.

And first I will deal with the objection that the confessions are not admissible, for this involves a question of vital importance.

As I have already said Mr. Birley purported to record them under Section 164 of the Criminal Procedure Code.

But it is urged that they do not come within the terms of this section, that there is no other section of the Criminal Procedure Code that can be called in aid by the Prosecution, and apart from the Code, there is no provision of law under which their admission can be justified.

For the law relating to confessions we must first turn to the Evidence Act passed with a view to consolidating, defining and amending the Law of Evidence, of which the law as to confessions forms a part..

The relevance of confessions is defined in that catena of sections which come under the general heading "Admissions."

Section 21 declares that admissions are relevant and may be proved as against the person who makes them and a confession is an admission.

Sections 24 to 29 qualify the generality of this provision, and of these Sections 25, 26, and 27 practically reproduce Sections 148, 149 and 150 of the Criminal Procedure Code of 1861. As these provisions were incorporated in the Evidence Act, which received the Governor-General's assent on the 15th of March 1872,

they naturally did not find a place in the Criminal Procedure Code of 1872 which received the Governor-General's assent on the 25th of the same month.

The Criminal Procedure Code of 1872, however, was not wholly silent as to confessions, for by Section 122 it empowered a Magistrate to record confessions in the manner therein prescribed. This section roughly corresponds with Section 164 of the present Criminal Procedure Code by reference to which the present objection must be determined.

The objection to their admissibility under Section 164, Criminal Procedure Code, rests first on the contention that, when they were recorded, the enquiry had commenced, and next on the fact that the Magistrate, who, recorded the confession, was the Magistrate before whom the enquiry was conducted and by whom the order of commitment was made. In support of this view reliance is principally placed on the Full Bench decision in *Empress vs. Anuntram Singh*, I. L. R., 5 Cal. 954 which it is argued, supports the view that, at the time when Mr. Birley recorded the confessions, the enquiry had commenced, and that he could not in the circumstances record the confessions under Section 164. The decision in *Anuntram Singh's* case was on Section 122 of the Code of 1872, and it will therefore be necessary to compare the provisions of that Code with those of the present Code, in order to estimate the extent to which that decision can be regarded as a controlling authority for the purposes of this case. First then, I will examine the provisions of the Code of 1898 and consider their application, apart from authority, to the circumstances of this case. Section 164 provides, that...(section quoted here).

Therefore to come within the scope of this section a confession must be made either (1) in the course of an investigation under the Chapter XIV, or (2) at any time afterwards before the commencement of the enquiry or trial.

An investigation includes all proceedings under the Code for the collection of evidence conducted by a Police officer [Section 4 (b)] and there can be no doubt on the facts that the confessions in this case were made in the course of an investigation under Chapter XIV. But then it is said that this is immaterial as they were not made before the commencement of the enquiry. To this however the answer is that the condition requiring the confession to be prior to the commencement of the enquiry is only imposed when the investigation has ceased, and not when it is made in the course of the investigation.

This appears to me to be the true and natural meaning of this provision which is a repetition of the provision to this effect contained in the Code of 1882, and I think this is none the less so because the punctuation in the Code of 1882 has not

been retained. But even if it be assumed for the sake of argument that the commencement of the enquiry terminates the applicability of Section 164, can it be said that on the 4th of May Mr. Birley had commenced the enquiry? To determine this we must have regard to the words of the Code. Chapter XV deals with the Jurisdiction of the Criminal Courts in Inquiries and Trials: the first group of Sections, that is, Sections 177 to 189 deals with "Place of inquiry or trial:" the second group is headed "Conditions requisite for Initiation of Proceedings". Now Section 190, which is the leading section of this group, indicates the conditions on which a Magistrate may take cognizance of an offence, that to say it may be (a) upon receiving a complaint, (b) upon a police report, or (c) upon information received from any person other than a Police officer, or upon his own knowledge or suspicion that such offence had been committed.

On the 4th of May there had been no complaint or police report, and the only information was received from Mr. Clarke, a Police Officer, who had taken part in the arrest, and possibly from Mr. Plowden, another Police Officer. But this information, being from a Police Officer, would not have justified Mr. Birley in taking cognizance, and it does not appear that he had any knowledge or suspicion apart from this information. It follows, therefore, that on the 4th of May none of those conditions had been satisfied on which alone cognizance could have been taken by Mr. Birley and therefore the inquiry cannot then have commenced.

The necessary result of this train of reasoning is that the confessions in this case fall within the scope of Section 164, if regard be had only to the words of the Code. But is there anything in the decided cases which precludes us from accepting this reading of the Act? Certainly not the case of *Empress vs. Anantram Singh*, I. L. R. 5 Cal. 954, for that was a decision on the Code of 1872 from which the words and provisions on which I have relied, are absent. The same remark obviously applies to the decision in *Empress vs. Yakub Khan*, I. L. R., 5 All. 253, which merely purports to follow the authority of *Empress v. Anuntram Singh*.

Moreover, it is to be noticed that in both those cases confessions were upheld on the ground that they did not come within Section 122 of the Code of 1872, but within Section 193, which, to to some extent, resembles the present Section 342. But words have been introduced into the present section which would make the decisions in those two cases impossible in these days. The decision in *Sat Narain Tewari vs. Emperor*, I. L. R., 32 Cal. 1085, has no bearing on the point I am now discussing, for there in the opinion of the learned Judges, the Magistrate was carrying on an enquiry under section 202. Nor does 5 C. L. R. 238 throw

any light on the present question. My conclusion therefore that the enquiry had not commenced is not disturbed by anything in the decided cases.

But then it is contended that as Mr. Birley was the Magistrate who conducted the enquiry and ultimately committed the appellants he had no jurisdiction to record the confession. This argument rests on the decisions in *Reg. vs. Bai Ratan*, 10 Bom., H. C. Rep. 126 and *Empress vs. Anuntram Singh* cited above. But both these decisions were on the language of the Code of 1872 which materially differs from that of the present Code. It is now provided that "*Every*" Magistrate may record a confession, the word "*Every*" being substituted for "*any*," and there has also been added the explanation "It is not necessary that the Magistrate receiving and recording a confession or statement should be a Magistrate having jurisdiction in the case."

These alterations make it clear that it can no longer be contended on the strength of the decisions in *Reg. vs. Bai Ratan* and *Empress vs. Anuntram Singh* that a confession recorded by a Magistrate who afterwards conducts the enquiry is outside the provisions of Section 164.

In the view I take, it is unnecessary to consider whether if the enquiry had actually commenced on the 4th of May the confessions would have been inadmissible. The authority of *R. v. Narain* (*Ratan Lal's* unreported cases 679) is opposed to this view, and the present inclination of my opinion is that the argument seeks to derive from the provisions of the Code a limitation on the law of confessions as defined by the Evidence Act for which there is no sufficient warrant. Then are the confession vitiated by the fact that in some instances, and to some extent; the statements made were in response to questions?

As far back as 1868 it was held by Sir Barnes Peacock in *Queen vs. Nobodeep* 15 W. R. Cr. 71 that a statement made by a prisoner in answer to questions were admissible against him, and now we have statutory recognition of this view in Section 29 of the Evidence Act. Therefore the mere fact that a statement was elicited by a question does not make it irrelevant as a confession. It is to be observed that Ullaskar in effect invited Mr. Birley to question him, and that he should in the circumstances have complied with the request cannot call for any adverse comment. I do not however intend to indicate that the fact of statements being elicited by questions may not be very material to an enquiry as to whether the confession is voluntary or not.

On the contrary there are circumstances in which it may be a most material fact, for, unhappily, not merely involuntary, but actually false confessions come before the Courts.

Indeed it may be a question whether such a confession has not come to light in the course of these proceedings, as it has been stated before us by Mr. Norton that, for one of the attempted outrages on the late Lieutenant-Governor disclosed by the confessions in this case, certain coolies have been tried and convicted and are still in prison, part of the evidence against them being their own confessions. If the confessions in this case are true, then, as Mr. Norton has remarked, there may be reason to apprehend that those coolies have been improperly convicted. Mr. Norton who appeared for the Crown in that case as well as this has submitted that the Government should be moved by us to release those coolies. It is however outside our province to investigate this matter, but no doubt it will be made the subject of careful enquiry by the Government, if this has not already been done, and the representation of Counsel for the Crown will be brought to the notice of the Government. I will differ for the present considering how far the individual confessions in this case are or are not voluntary, for this enquiry will be more conveniently pursued as each confession comes to be separately considered. But, apart from this, the result is that in my opinion Mr. Birley has complied with all the provisions prescribed by Section 164 of the Criminal Procedure Code so that the presumption indicated in Section 80 of the Evidence Act applies. In addition to that he has given evidence at the trial affirming his belief that the confessions were voluntary, and, in the circumstances, I hold that the confessions have properly been admitted in evidence by the Sessions Judge. The Sessions Judge has relied largely on these confessions, and in this I think he was justified ; for, while fully realising the caution and reserve with which confessions must ordinarily be accepted, those with which we are concerned in this case are so exceptional as not to create in my mind the slightest apprehension of sinister influence or pressure.

I now come to the evidence of what have been termed the watch or shadowing witnesses namely Inspector Purna Chandra Biswas, P. W. No. 1, Inspector Satish Chandra Banerji, P. W. No. 14, Inspector Chandi Charan Mukherji, P. W. No. 78, Sub-Inspector Suresh Chandra Ghose, P. W. No. 93, Inspector Narendra Kumar Mullick, P. W. No. 95, Shiva Kali Das, P. W. No. 98, a police informer, Inspector Soshi Bhusan De, P. W. No. 101, Sub-Inspector Bala Chandra Ganguli, P. W. No. 102, Sarat Chandra Das in Police employ, P. W. No. 107, and Sub-Inspector Sarat Chandra Palit, P. W. No. 192. The evidence of these witnesses so far as it relates to the presence of any of the accused at a place of conspiracy is either general or specific. As a specimen of general evidence I will cite an instance taken from the testimony of Satish Chandra Banerji who says "At 32, Murari-pukur Lane from 20th April to 27th I saw these (Bibhatu Bhusan

Sircar, Sailendra Nath Bose, Sushil Kumar Sen, Nirapada Roy, Indu Bhushan Roy, Upendra Nath Banerjee, Birendra Chandra Sen, Abinash Chandra Bhattacharjee, Sachindra Kumar Sen, Hrishikesh Kanjilal, Sudhir Kumar Sircar, Sisir Kumar Ghose, Bijoy Kumar Nag, Pares Chandra Maulik, Din Doyal Bose, Purna Chandra Sen, Birendra Chandra Sen, Barindra Kumar Ghose, Ullaskar Dutt, Krishna Jiban Sannyal, Kunja Lall Shaha)." In relation to this class of evidence it has been submitted before us both by Mr. Norton and Mr. Stokes on behalf of the Crown that these general statements are of no great value: and this submission was made by Counsel, not by way of a casual comment, but as a necessary part of their argument for the purpose of discounting the effect of statements made in this general form as to the presence of accused persons at a time when admittedly they were absent. The specific evidence relates to narratives of particular incidents and where it can be credited it is manifestly more satisfactory; but for a circumstance to which I will later refer, it would have possessed very considerable value.

In appreciating this evidence it is necessary to bear in mind that while the incidents described occurred for the most part in April 1908, the evidence as to them was not given until very much later; thus P. W. No. 1 did not depose in the Court of Sessions until the 28th of October 1908, and P. W. No. 192 not until the 20th of February 1909. The other watch witnesses were examined in the interval between those two dates. And yet in relating what they profess to have observed these witnesses described with minute detail of time and place the movements of those of the accused watched by them, and this has been done without in any instance refreshing memory. And this becomes the more remarkable if it be borne in mind that these witnesses repudiate the suggestion of any intermediate refreshment of memory by the perusal of notes.

I may illustrate what I say by a reference to the evidence of Inspector Purna Chandra Biswas, the officer authorized by the Local Government to prefer the complaint in this case. Not only did he himself watch, but reports were made to him by other watching witnesses, and his evidence has been directed not only towards describing what he himself observed, but also towards corroborating under section 157 of the Evidence Act, the evidence of the witnesses who brought reports to him. Now this Inspector in the course of his evidence purports to give the details of what had been reported to him. Thus while giving evidence on the 31st of October 1908, he deposes to no less than 30 separate reports received by him between the 8th and the 28th of April from different officers or spies.

These reports, moreover, were not by any means simple affairs:

by way of example I may cite the Inspector's description of a report made to him on the 21st April in his own words.

"On 21st April I got a report from Sarat Chandra Palit and Sarat Chandra Dass that two men came to 38-4 Raja Naba Kissen's street with a cart; they brought out 4 tin port-manteaus, 2 bags, a wooden case, and 2 bundles, they loaded the cart, and one of the men took it to 15 Gopi Mohan Dutt's Lane; three men came out from No. 15 and took the goods inside. No names were then mentioned to me. That day Sarat Chandra Palit and Sarat Chandra Dass took me at about 8 or 8-30 p. m. to No. 15. Siba Kali Das gave me a report that day that he had followed one of the two men who had brought the cart from 38-4 to 59, Paddopukhar Road, Bhowanipore, and from there to 30-2, Harrison Road, and then to 44-3 Harrison Road and then he drove to Maniktolla Bridge and then walked into the garden. 59, Paddopukur Road belongs to two High Court Vakils, Naren and Suren Bose. On 21st. April, I don't remember if I got another report. I have heard of Waldie's shop. That day Satis Chandra Banerjee and Suresh Chandra Ghose reported to me that they had seen two men come out of the garden: they took tram at Hedna-talao and went to China Bazar; purchased a big bottle of colourless liquid from D. Waldie & Co., and two big enamelled cups, from a shop in China Bazar and also something from Ghose & Co.'s Pharmacy in front of the Oxford Mission. Then they went back to the garden." In reference to this evidence, the Inspector has stated "I have read my deposition in the Court of the Magistrate, not lately; I read it when I gave it. I made notes during the course of my investigation, they are in the office. I have not read them lately: All I have deposited to-day is from memory."

Mr. Norton has frankly stated that he could not bring himself to believe that the witnesses had not, before coming to Court, looked at the reports for the purpose of refreshing memory, but he contended that although the witnesses did not tell the truth in this respect, it did not follow that they were not speaking the truth on other matters. This is a legitimate contention, but, at the same time, I think it is much to be regretted that any evidence should be given which Counsel for the Crown feels constrained to describe as not true.

It would be profitless to speculate why the reports were not honestly used for the purpose of refreshing memory in Court, but this is certain that the course adopted not merely gives rise to some sense of suspicion, but has the more serious consequence of depriving the evidence given of the added value it would have possessed had it been justified by reference to contemporaneous reports or diaries. In the Court of Sessions there appears to have

been a complete misconception as to the true legal character of these reports or diaries ; for it was assumed that they came within the ambit of section 172 of the Criminal Procedure Code. But they clearly did not, for at the time when they were written there was no investigation under Chapter XIV of the Code. I am therefore of opinion that an error has been committed in reference to the exclusion and use of these documents.

For the defence it has been suggested that no reliance can be placed on any part of the evidence given by the watch witnesses, and that it probably was built up after the event on the foundation afforded by the confessions. But with this I do not agree : I hold that there was a system of watching as declared by the prosecution, and this is confirmed by the fact proved to my satisfaction that premises were hired to enable the watch witnesses to carry on their work, and by other matters which it would be premature to indicate now, but will appear in a later part of this judgment. In fact I am convinced that, though as to particulars there may be ground for doubt and even disbelief, still in its broad features the case is a genuine and true one, and in no sense concocted by the police authorities who have conducted this complicated investigation with considerable credit to themselves. In this connection I desire to refer especially to Inspector Shamsul Alum whose work has come more directly under our notice as he has been present in this Court during the hearing of this appeal. His industry and perseverance, as for instance in his solution of the cryptogram, to which I shall later refer, are deserving of great commendation and he evidently has spared no effort in mastering the details of this case. I am glad to have this opportunity of expressing my appreciation of the assistance he has rendered.

At the same time it has to be recognised that what has been said by the watch witnesses cannot be accepted without careful sifting and consideration. All the watch witnesses are not of the same reputation. Thus Sarat Chandra Dass who describes himself as an eating-house-keeper, and as being in police employ, was mixed up in a forgery case in a manner that does not inspire confidence, and we find his evidence on occasions discarded by the Sessions Judge. So again Siva Kali Das, the police informer, is not a witness on whom much reliance can be placed.

The remaining watch witnesses are officers in the Criminal Intelligence Department and the criticism directed against them does not rest on disrepute, but on the intrinsic character of their evidence. Thus the Sessions Judge says of Sub-Inspector Suresh Chandra Ghose that "his identification generally has been on a liberal scale," that Chandi Charan "gave his evidence in rather a reckless manner.....he frequently answered ques-

tions apparently without stopping to think and sometimes answered questions which he was not asked" and that "Chandi, Suresh and Satish have made mistakes in identification."

And before us it has been made clear that witnesses have stated that they saw accused persons at times and places when they could not have been there. Thus I am convinced that Bolai Chand Ganguli did not see Abinash at Sealdah on April 12th, that Sishir was not seen at the garden by Satish between the 20th and the 27th of April, or by Suresh between the 19th and 26th April, and that Biren was not seen at the garden by Suresh and Satish. This is all that need be said by way of general introduction to the evidence of the watch witnesses, and enough has been shewn to justify caution in accepting it as a basis for conviction.

In connection with these witnesses an argument has been advanced by the Counsel for the Crown, and I have noticed the same argument in other cases, that if a particular incident to which they may depose is not believed, then there must be perjury. In *Reg v. Puddick* 4 F. and F. 497 a similar argument elicited a protest from the Bench and its fallacy was exposed by pointing out in effect that all that an acquittal would imply would be that the Court was not satisfied beyond all reasonable doubt that the offence had been committed.

Next Mr. Das has attacked the searches and has urged that even if there was jurisdiction to direct the issue of search warrants, as I hold there was, still the provisions of the Criminal Procedure Code have been completely disregarded. On this assumption he has contended that the evidence discovered by the searches is not admissible, but to this view I cannot accede. For without in any way countenancing disregard of the provisions prescribed by the Code, I hold that what would otherwise be relevant does not become irrelevant because it was discovered in the course of a search in which those provisions were disregarded. As Jimuta Vahana with his shrewd commonsense observes "a fact cannot be altered by 100 texts," and as his commentator quaintly remarks, "If a Brahmana be slain, the precept 'slay not a Brahmana' does not annul the murder." But in the absence of the precautions designed by the legislature lends support to the argument that the alleged discovery should be carefully scrutinized. In this case there do seem to have been some irregularities; in the case of some searches there were not the two witnesses directed by the Code, while in the case of others it is at least problematical whether the witnesses called in, comply with the statutory test of being "respectable inhabitants of the locality."

But it is the searches at the garden that have been most vigorously attacked. The first of these was on the 2nd May, and was conducted by several Police officers. The search witnesses

were three, Sheikh Wazir, Sheikh Monglu and Sheikh Mengree, but they were not called as witnesses at the trial. The Code requires that a list of all things seized in the course of the search and of the places in which they are respectively found shall be prepared by the officer or other person making the search and signed by the witnesses, and a copy of the list prepared signed by the witnesses is to be delivered to the occupant at his request (section 103). Lists were prepared in consequence of this search, but one of the questions is whether, as the prosecution allege, they were prepared at the time in the garden, or as the defence contend, subsequently at the Police Station. Notwithstanding the sworn testimony, I am doubtful whether the search lists were completed at the garden. The alteration on the 5th sheet of the hours of search hardly agrees with the theory that it was a contemporaneous record: the presence of 14 names at the head of the search list instead of 18 is to some extent remarkable: and the appearance on documents found at 15, Gopi Mohan Dutt's Lane of the signature of garden witnesses is calculated to rouse doubt and certainly points to some degree of confusion at the Park Street Police Station. On the whole I am not convinced that the search list was completed at the garden. But this is more a matter of form than of substance, except so far as it necessitates careful enquiry as to whether the articles and documents shown in the garden list were in fact found in the garden. And in the view I take this is only of importance in reference to item 84, for in view of Arabindo Ghose's acquittal the alleged discovery of Ex. 1128 at the garden loses its significance.

Item 84 on sheet No. 7 calls for notice. It will be seen that the words "and books in Bengali on modern warfare and pictures and papers" have the appearance of being inserted after the next succeeding item had been written. Coupled with this we have the fact that the certified copy of the search list furnished to the defence on the 9th of July does not contain these words. As against this, however, the search list filed as an exhibit in the Court of the Committing Magistrate on the 18th of May contains these words, and I certainly am not prepared to hold that they were added after the exhibit was filed. But unless they were so added the omission from the defendants' copy shows nothing.

The books included in item 84 are marked as Exhibit 144, and Inspector Frizzoni, who conducted the garden search, deposes that he found them at the garden in a broken tin box, Exhibit 143. This is not a point on which he is likely to have made a mistake, as these books are 394 in number, and he does not seem to me to have been shaken in cross-examination on this point.

The searches at the other places have also been vigorously

criticised, but after careful consideration I do not think it would be profitable to discuss these criticisms at this stage : should it be necessary I will notice them hereafter in connection with any document or article to which they may be applicable. The many searches that have been made not only in connection with this case, but on other occasions also, have placed within the reach of the prosecution a mass of documents. And of these a great number have been made exhibits in this case.

As far as I can judge they were in the first instance brought on to the record by virtue of their having been discovered at a search, and not because they had been proved against the accused generally, or any one of the accused by any of the acknowledged methods of proof. This fact, however, has not been kept in view, with the result that there has been a certain degree of confusion, which has become the greater from the remarkable lack of discrimination with which these documents were tendered by the prosecution, and the use that Counsel for the Crown has striven to make of them.

In dealing with documentary evidence it is necessary to keep carefully in view the use to which it can legitimately be put, having regard to the proof by which it is brought on to the record. A document may, for example, be used in evidence for the purpose of affecting some one with knowledge of its contents regardless of whether those contents are true or false, or for the purpose of proving the truth of that which it contains : but from the fact that a document may be relevant for the first purpose, it by no means follows that it is relevant also for the second.

This distinction is so obvious that I should not have deemed it necessary to refer to it, but for the course this case has taken before us. Excluding for the moment exceptional cases, there can be no doubt as to the general rule that the fact that a statement is made in a private document is not by itself proof of its truth or any more admissible to prove the truth of the matter stated than an oral statement by the same person would be. Writing does not by itself give any greater sanction to the statement, or take the place of the sanction imposed by law. But at the same time a statement whether oral or written can be used against a person to prove the truth of the matter stated, if, as against him, it can be regarded as an admission. But the facts must be proved by virtue of which it can be treated as admission.

If the admission was actually written by him, and it is on this ground that it is sought to be used, then the fact that it was so written must be proved by those methods which the law allows.

The ordinary methods of proving handwritings are (1) by calling as a witness a person, who wrote the document or saw

it written, or who is qualified to express an opinion as to the handwriting by virtue of section 47 of the Evidence Act, (2) by a comparison of handwriting as provided in section 73 of the Evidence Act, and (3) by the admission of the person against whom the document is tendered. A document does not prove itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear.

In applying the provisions of section 73 of the Evidence Act it is important not to lose sight of its exact terms. It does not sanction the comparison of any two documents, but requires that the writing with which the comparison is to be made, or the standard writing as it may be called, shall be admitted or proved to have been written by the person to whom it is attributed, and next the writing to be compared with the standard, or in other words the disputed writing must *purport* to have been written by the same person, that is to say the writing itself must state or indicate that it was written by that person.

The section does not specifically state by whom the comparison may be made, though the second paragraph of the section dealing with a related subject expressly provides by way of contrast that in that particular connection the Court may make the comparison.

In this case we are told that a comparison was made by the learned Sessions Judge out of Court after the conclusion of the arguments, but whether with the assistance of the Assessors or not does not appear. If there was no submission of this question to the Assessors, it may be a question how far this was not an irregularity. The result has been that on a comparison so conducted the learned Sessions Judge without in all cases observing the precise terms of the section has held certain writings to be those of one or other of the accused without having invited or heard arguments from their Counsel on this point. I cannot think this was a proper course to pursue: a comparison of handwriting is at all times as a mode of proof hazardous and inconclusive, and especially when it is made by one not conversant with the subject and without such guidance as might be derived from the arguments of Counsel and the evidence of experts. In *Sreemutty Phooddee Bibee vs. Govind Chandra Roy*, 22, W. R. 272, it was said by the Court that "a comparison of signature is a mode of ascertaining the truth which ought to be used with very great care and caution."

In this case no expert has been called to assist the Court, and not because no expert was available: there is, it is well known, a Government expert as to handwriting and some of the documents in this case bear a stamp which shows that they

have been submitted to them. It is true that the opinions of experts on handwriting meet with their full share of disparagement at times, but at any rate there is this use in their employment that the appearances on which they rely are disclosed, and can thus be supported or criticised, whereas an opinion formed by a Judge in the privacy of his own room is subject to no such check. And that the aid of an expert may be of value was clearly the opinion of so distinguished a Judge as Mr. Justice Blackburn who in *R. vs. Harvey* 11 Cox 546 refused to allow a comparison to be made without the help of experts. But whether there has been irregularity or not is of no great moment in the view I take, for after making such comparison as the section permits I am unable to hold that in any case handwriting has been proved by this method.

But to be an admission it is not necessary that a document should have been written by the person against whom it is sought to be used: it is sufficient if it be proved that the document has been in his possession, and that his conduct in reference to it has been such as to create an inference that he was aware of its contents and admitted their accuracy. Unless this be done the document cannot be used as proof of its contents.

What conduct would properly give rise to such an inference must necessarily depend on the circumstances of each case. Mere possession of letters would not ordinarily go for much and the value of such possession must largely depend upon whether it can be shown that their contents have been recognised and adopted by the replies they may have elicited or the conduct they may have inspired. If no such consequence can be traced their value must necessarily be materially discounted.

Considerable use has been made of the provisions of section 10 of the Evidence Act in the present case, and it is therefore important to observe that its operation is strictly conditional upon there being reasonable ground to believe that two or more persons have conspired together to commit an offence. Regard must also be had to the limits within which this class of evidence can be used.

Section 30 of the Evidence Act may also here be noticed as of cognate bearing, for by its terms, the Court "may take into consideration" the confession of one of several persons jointly tried for the same offence against his co-accused as well as against himself. The confession is not evidence against the co-accused in the sense that a conviction on that alone could be supported; it can only be taken into consideration, that is to say, it can lend assurance to other evidence. The confessions in his case have been largely employed for this purpose.

The application of these general remarks will become apparent when I take up the individual cases to which they are relevant, and at this stage no more need be said in this connection.

Among the documents used as evidence in this case are a number of copies of the *Jugantar*, the contention of the prosecution being that this newspaper was, as it has been described, a limb of the conspiracy. I now propose to examine this contention.

The *Jugantar* is proved to have been started in March 1906, its offices then being at 27, Kanai Lal Dhar's Lane.

Before the end of that year its offices had been removed to 41, Champatola 1st Lane, and they still continued to be there on the 1st July 1907, when the premises were searched.

On the occasion of that search amongst those seen there were the appellants Abinash, Sailendra, and Upen and possibly also Bibhuti and Sudhir, and there was also found a proof sheet and the manuscript of the *Bartaman Rananiti* and some proof sheets of the *Mukti Kon Pathe*, two publications with which I shall deal more in detail when I come to the case of Abinash. In addition to this we find association with the *Jugantar* admitted by several of the accused in their confessions. Baren, for instance, in his confession, after stating that he began to collect the band which had been arrested says "with my friend Abinash Bhattacharyya (now under arrest) and Bhupendra Nath Dutt (now in jail) I started the *Jugantar* paper. We managed it for nearly $1\frac{1}{2}$ years, and then gave it over to the present Managers." Exhibit 1272 confirms the truth of his admission of connection with the *Jugantar*. Upendra Nath Banerjee declares that he was a regular contributor to the *Jugantar*. Sudhir states that he assisted in publishing the paper. Hrishikesh Kanjilal says that Upen showed him a few copies of the *Jugantar* and he studied them, and then he describes how he went to the *Jugantar* Office and was introduced to Baren by Upen, and thereafter he became friends with Baren. And Ullaskar Dutta in explanation of the circumstances under which he joined the Society declared, "It had been announced in the *Jugantar* that a Secret Society would be started, and I had a natural inclination to join, so I got introduced by Barendra."

Turning to the articles of the *Jugantar* it is unnecessary that I should go in detail through them; a large number of them have been read to us by Mr. Norton, and some of the more important have been discussed in this judgment by the learned Sessions Judge. It will be enough that I should state my view of them, and I cannot do so more effectually than by adopting the language of the Sessions Judge who says, "they exhibit a burning hatred of the British race, they breathe revolution in

every line, they point out how revolution is to be effected, no calumny and no artifice is left out which is likely to instil the people of the country with the same idea or to catch the impressionable minds of youth." The leading idea and objective is complete independence, and this is to be effected by preparation ultimately culminating in the expulsion by force of arms, if necessary, of the British from India.

We thus find a close and more than accidental correspondence between the propagandism of the *Jugantar* and the doctrines, objects and methods that were taught and practised in the garden.

And when regard is had to all these circumstances, the identity of workers and the consonance of teaching cannot be mere coincidence, and, in my opinion, the only just inference to be drawn is that the *Jugantar* was a branch of the conspiracy into which we are inquiring.

That the promoters of the paper had not miscalculated its value is apparent not only from the confessions from which I have cited, but also from other materials, and perhaps no more striking illustration of its pernicious and insidious influence can be found than in the postcard, Exhibit 1079, addressed to Abinash and found in the course of the search at 4, Raja's Lane. It runs as follows :—

“Bande Mataram,
Mirasi, 7th September 1907.

“ Sir,

From your advertisement, articles, and your bold writings, I understand that he alone, who has the subversion of the Firingee (British) Government at heart, should by all means read the *Jugantar*. I, a schoolboy, living in a hilly country don't feel any oppression of the Firingees, and I give way before people for want of information. I am, therefore, in need of *Jugantar*. For it acquaints us to a great extent with the devices of driving away the Firingees and also make us alive to wrongs. I am extremely in straitened circumstances, hardly able to procure one meal a day; nevertheless my desire for newspaper reading is extremely strong. Hence I approach you as a beggar. Ah! do not disappoint such an eager hope of mine. Please grant my prayer. I shall pay the price when I shall have the means. Please ever oblige me by sending a sample copy with an expression of your intention. I hope you will favour me by enlisting me as a subscriber. Further, please don't fail to send a sample copy.

Submitted by,

Sree Debendra Chandra Bhattacharjee,

P. O. Muchikandi, Mirasi,

Sylhet.”

I cannot pass from a consideration of the *Jugantar* articles without commending the skill and spirit with which they have been translated from Bengali into English for the purpose of being used in Court. As far as I have been able to judge the translations have been true to the spirit of the original, and have at the same time faithfully expressed all that it said and implied in admirable English.

I have already dealt with the legal objections to the charges, and it will now be convenient that I should discuss generally, and not in relation to any individual case, the legal aspect of these charges. They are all based on sections 121, 121A, and 122 of the Indian Penal Code.

Section 121 is in these terms:—"Whoever wages war against the Queen, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or transportation for life, and shall forfeit all his property."

It is argued on behalf of the Crown that it was intended by the framers of the Indian Penal Code to reproduce the English Law of Treason in its entirety, that is to say, not only the Statute Law, but also the interpretation placed on it by the cases. But, any one who has studied the history of section 121, which was a part of the Law of the land before its incorporation in the Indian Penal Code, and the literature on the subject, must know that this was not the intention of those who framed the provision.

As in my opinion the first batch of appellants could not legally be convicted of an offence under section 121, and, as in the view I take of the facts established against the rest, no offence under the section has been established, I think it right to refrain from discussing in detail the meaning of section 121, for in the circumstances the question does not arise; still I consider the view originally taken by the Government that the case did not fall within section 121 was manifestly right, and the change from this view, induced as has been indicated, was mistaken.

So far as conspiracy is charged, the case rests on section 121A., which provides that, "Whoever within or without British India conspires to commit any of the offences punishable by section 121, or to deprive the Queen of the sovereignty of British India or any part thereof or conspires to overawe, by means of criminal force or of the show of criminal force, the Government of India or any Local Government, shall be punished with transportation for life or any shorter term, or with imprisonment of either description which may extend to ten years."

"Explanation—To constitute a conspiracy under this section, it is not necessary that any act or illegal omission shall take place in pursuance thereof."

"A conspiracy," it has been said "consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do a lawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When two agree to carry it into effect, the very plot is an act in itself, and the act of each of the parties, promise against promise, *actus contra actum*, capable of being enforced, if lawful, punishable if for a criminal object or for the use of criminal means. ... The number and the compact give weight and cause danger." (*Mulcahy v Reg.* L. R. 3 H. L. p. 317).

One of the Assessors in coming to the conclusion that there was no conspiracy seems to have been influenced by the view that there was not "an immediate purpose," but that the objective was "a far off revolution."

But the question to be determined is whether there was an agreement between two or more of the accused to do all or any of the unlawful acts charged. The fact that the purpose was not immediate, if it be a fact, would only be material in so far as it might bring the matter within the saving operation of section 95 of the Indian Penal Code, but I can find no trace of any suggestion to that effect before the Court of Sessions, and certainly no reference has been made in this Court to that section.

Baren in his confession no doubt speaks of a far off revolution, but then he goes on to say that they wished to be ready for it, and so were collecting weapons in small quantities. Major Black, the Chemical Examiner, says that, taking all the articles he had seen from all the places, he should take the costs to be from Rs. 5,000 to Rs. 6,000, and the overt acts disclosed by the evidence, though not in themselves a waging of war, make it plain that there was no reluctance to use explosives to the peril of human life and for the purposes of assassination. It is therefore impossible to treat the conspiracy charged as childish or negligible: to those who were members of it the movement meant something that was real and earnest, and it does not detract from the quality of the offence that the object in view was not likely to be realized, though this may be relevant to the question of punishment where the offence is established.

Though to establish the charge of conspiracy, there must be agreement, there need not be proof of direct meeting or combination, nor need the parties be brought into each other's presence; the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design.

So again it is not necessary that all should have joined in the scheme from the first: those who come in at a later stage are equally guilty, provided the agreement be proved. And this

leads me to notice an argument advanced on behalf of the defence that all charged as conspirators must be convicted or all acquitted. The *Queen vs. Manning*, L. R. 12. Q. B. D. 241 was cited as an authority for this proposition: but that case turns on the fact that only two persons were charged, so that both had to be convicted. And this for a very good reason; an agreement implies the concert of at least two persons, so that *ex vi termini* there cannot be a conspiracy of one. Though this is somewhat obscured by the line of reasoning in the judgments, the fact is placed beyond doubt by the judgment of Wright J. in the *King vs. Plummer*, L. R. 1902, 2 K. B. 339.

The objection therefore fails.

Though the appellants have with a few exceptions all been convicted under section 122 as well as under sections 121 and 121 A, it is conceded by Mr. Norton that what is established under section 122 really is a part of, and goes to make up the offence under section 121 A, so that a separate conviction and punishment under section 122 is not sought by the Crown.

Another matter to which I desire to allude is the general character of the evidence. From the nature of the case it is to a large extent circumstantial, and in dealing with it the rules specially applicable must be borne in mind. There is always the danger in a case like the present that conjecture or suspicion may take the place of legal proof, and therefore it is right to recall the warning addressed by Mr. Baron Alderson to the Jury in *Reg. v. Hodges* 2 Lewes C. C. 227, where he said "the mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to form parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters, to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

The mass of material that has found its way on to the records in this case, sometimes without a clear perception of the extent to which it was admissible, has made our task peculiarly difficult, and has made it especially incumbent on this Court to realise and keep in mind that the rules of evidence cannot be departed from because there may be a strong moral conviction of guilt (*Queen v. Baiju Choudhury*, 25 W. R. Cr. 43); for a Judge "cannot set himself above the law which he has to administer or make it or mould it to suit the exigencies of a particular occasion." One matter noticeable in the record of the proceedings before the Court of Sessions is the extent to which answers seem to have been elicited from prosecution witness-

ses by leading questions put to them by Counsel for the Crown, and this appears to have been done notwithstanding the objection raised by Counsel for the defence. As I have noticed a similar procedure in other cases, I think it right to draw attention to the law governing this matter. Section 142 of the Evidence Act provides that leading questions must not, if objected to by the adverse party, be asked in an examination-in-chief or in a re-examination, except with the permission of the Court.

It is the Court, and not Counsel for the Crown, who can determine whether leading questions should be permitted, and the responsibility for that permission rests on the Court. Now, not only were objections made by the Counsel at the time, but a petition of objection was filed, and, from the order on its back, it appears that no permission was given by the Court, though the witness "had to be pressed in regard to many points." This in the opinion of the learned Judge did not amount to cross-examination. But the point for decision was whether leading questions were asked, and what is a leading question is defined in section 141 of the Evidence Act, which provides that "any question suggesting the answer which the person putting it wishes or expects to receive is called a leading question." How Mr. Norton can have applied the pressure without the use of leading questions is by no means evident.

I now pass to a consideration of the individual cases and first I will take up that of Baren.

* * * * *

After dealing with the case of Barin at great length His Lordship said—The articles and documents found on the occasion of the search, Baren's conduct at the time, his confession, and the evidence I have noticed afford complete proof that he is guilty of the offence with which he is charged under section 121 A, even without relying on the confessions of his co-accused, which we are entitled to take into consideration against him under section 30 of the Evidence Act. Therefore the conviction under Section 121 A must be confirmed.

His Lordship then considered the case of Ullaskar and held—

In my opinion the evidence clearly establishes that Ullaskar Dutt was a party to the conspiracy, and that he is guilty of an offence under section 121 A of the Indian Penal Code.

In dealing with the case of Upendra.—His Lordship held.—

On a consideration of the evidence against Upendra Nath Banerjee the conclusion to which I come is that he was a member of the conspiracy and is guilty of the offence charged under section 121 A of the Indian Penal Code.

The next case considered was that of Indra Bhushan Roy. His Lordship said—On the materials furnished by the evidence the conclusion to which I come is that he was a member of the conspiracy and is guilty of an offence under section 121-A of the Indian Penal Code.

In the case of Bibhuty Sarkar he held—In my opinion there is ample confirmation of Bibhuti's confession, and having regard to the length of his residence there (garden) and to the prominent part he took, there can I think be no doubt, that he was a member of the conspiracy and guilty of an offence under section 121-A of the Indian Penal Code.

Dealing with the case of Hrishikesh, he said :—

This then is the evidence against Hrishikesh Kanjilal, and I am led by it to the conclusion that this accused, as his confession indicates, was a member of the conspiracy and is guilty of an offence under section 121-A of the Indian Penal Code.

After dealing at great length with the case of Sudhir Sarker he said :—On a consideration of the evidence I hold that Sudhir's presence at Seal's Lodge is established, and also that Seal's Lodge was intimately connected with the head-quarters of the conspiracy in Calcutta. I am further convinced that Sudhir was a frequenter of the garden, and the conclusion to which I come is that he is proved to have been guilty of an offence under Section 121A of the Indian Penal Code.

About Hem Das His Lordship's conclusion was.—Though Hem Chandra Das throughout acted with the greatest caution, still the evidence against him leaves absolutely no doubt on my mind that he was a member of the conspiracy, and I therefore hold him guilty under section 121-A. of the Indian Penal Code.

About Poresh Moulik he said "the evidence justifies the conclusion that he was a member of the conspiracy and I therefore hold him to be guilty under section 121A. of the Indian Penal Code."

About Sishir Ghosh he said "to my mind the evidence sufficiently establishes his membership of the conspiracy. And I therefore hold him to have been guilty of an offence under Section 121-A. of the Indian Penal Code."

About Nirapada Ghosh he said "the evidence against Nirapada, so far as it rests on documents is meagre, but coupling his undoubted presence at 15 Gopi Mohan Dutt's Lane, with the oral evidence which clearly establishes his connection with the garden, I am of opinion that the charge against him under section 121-A. is established. It may be that he took a subsidiary part but that affects the question of punishment rather than guilt and will be taken into consideration in that connection.

About Abinash he said—the conclusion to which it leads me is that his connection with the *Jugantar*, the *Mukti kon Pathe*, and the *Rananiti* is established, as also his project of conducting the *Navasakti* on the lines of the *Jugantar*, a scheme that came to nothing in consequence of his arrest and the break up of the conspiracy: that there was intimacy and co-operation between Baren and Abinash from an early stage, possibly from the very commencement of the conspiracy; that Abinash visited the garden and was visited by members of the conspiracy at No. 4 Harrison Road; and that he himself did conspire within the meaning of section 121-A., of the Indian Penal Code and has been guilty of an offence under that section.

About Balkrishna HariKane he said—The conclusion to which I come is that Balkrishna's guilt is not established, and that he should in my opinion be acquitted and released.

About Krishnajibhan Sanyal he said—This then is the whole of the evidence against Krishna. His statement appears to me to be a full and complete disclosure of his connection with the Calcutta headquarters, made without any reserve and it is conceded by the crown on the facts set out there alone the conviction could not be upheld. Then what is there beyond the facts set out in the statement? Nothing as it seems to me but the mistaken interpretation of the unproved letter Exhibit 924, and the evidence of Kriahna's presence at No. 15, Gopi Mohan Dutt's Lane, on which the learned Judge founds the inference, resting on nothing in the evidence, that Krishna received these instructions in the use of explosives. I have already given my reasons for holding that it would not be safe to act on this evidence.

This (in my opinion) is far too slender a basis on which to sustain the conviction of this lad, and I would therefore set aside his conviction and sentence and direct his release.

Both the brothers Sushil and Birendra Sen as well as Sailendra Bose and Indra Nundy were held not guilty.

Sentences.

The result then is that the convictions and sentences against all the accused under sections 121 and 122 must be set aside, but, as against Barindra Kumar Ghosh, Ullaskar Dutt, Upen-dra Nath Banerjee, Indu Bhushan Roy, Bibhuti Bhushan Sircar, Hrishikesh Kanjilal, Sudhir Kumar Sircar, Hem Chandra Das, Pares Chandra Manlik, Sisir Kumar Ghose, Nirapada Roy and Abinash Chandra Bhattacharjee, the convictions under section 121A of the Indian Penal Code should (in my opinion) be confirmed.

The question of punishment is one of considerable difficulty: those who have been convicted are not ordinary criminals; they are for the most part men of education, of strong religious instincts, and in some cases of considerable force of character.

At the same time they have been convicted of one of the most serious offences against the state, in that they have conspired to wage war against the King, and the punishment must be in proportion to the gravity of the offence. For the purpose of punishment Barindra Kumar Ghosh, Ullaskar Dutt, Upendra Nath Banarjee and Hem Chandra Das may properly be grouped together, for they were the leaders of the society and Ullaskar Dutt and Hem Chandra Das actually manufactured bombs that were used. We sentence each of them to transportation for life. The next class includes Bibhuty Bhusan Sircar, Hrishikesh Kanjilal and Indu Bhusan Roy, whose prominence in the society is shewn by the part they took in one or other of the attempted outrages disclosed by the evidence in the case. We sentence each of them to transportation for a term of ten years.

We sentence each of the following, *i.e.*, Sudhir Kumar Sircar, Pares Chandra Maulik, Abinash Chandra Bhattacharjee to transportation for a term of seven years. We sentence Sisir Kumar Ghose and Nirapada Roy respectively to five years rigorous imprisonment.

Mr, Justice Carnduff and I are divided in opinion as to the conviction of Krishna Jiban Sanyal, Sushil Kumar Sen, Birendra Chandra Sen, Sailendra Nath Bose, and Indra Nath Nandi, so the case with our opinions thereon must be laid before another Judge of the Court as provided in Section 429 of the Criminal Procedure Code.

Again I wish to express my sense of obligation to all those who have assisted in this difficult and complex enquiry. Though against several of the accused the convictions under Section 121 A of the Indian Penal Code have been upheld; it is a satisfaction to feel that those accused have been represented before us by Counsel and pleaders who have spared no effort of industry on their behalf, and have brought to our notice everything that could be legitimately argued for their clients' advantage: and I desire in particular to place on record my high appreciation of the manner in which the case was presented to this Court by their leading Advocate Mr. C. R. Das.

L. JENKINS.

Carnduff, J.—I agree with most, but, unfortunately, not with all, of the conclusions arrived at by my lord the Chief Justice on this appeal. Our difference of opinion is, in effect, limited to the

question whether the guilt of a few of the appellants has been proved or not. But there are some remarks which I feel called upon to make, as briefly as may be, on my own account, both on the case as it presents itself to me as a whole, and on certain points connected with it, although we are in substantial agreement regarding them.

* * * *

But, when one is at the outset strongly impressed with the truth of a case as a whole, it is obviously all the more necessary to be on one's guard against approaching with prejudice or unconscious bias the respective cases of the individuals concerned ; and, as the learned Chief Justice has put it, one must be very careful not to allow conjecture or suspicion to take the place of legal proof. All that his Lordship has observed on this point, and as regards the necessity for adhering to the rules of evidence throughout, I hope and believe I appreciate, and with it I cannot but concur. But "legal proof" is, as it seems to me, neither more nor less than what is indicated by the definition of the word "proved," which is to be found in section 3 of the Indian Evidence Act, 1872 ; that is to say, "a fact is said to be 'proved' when, after considering the matters before it, the Court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists." When the section speaks of the "matters before" the Court, it means, of course, the matters properly before it : whence it follows that, if and when irrelevant matter has been admitted in evidence, one must be careful—I would here refer to the provisions of section 167 of the Evidence Act—to exclude it from consideration and refuse to be in any degree influenced by it. But, given evidence on the record which is admissible, and excluding from consideration any that may have been wrongly admitted, I doubt whether it is possible to draw a distinction between "legal proof" and "moral conviction."

I will now address myself to the attacks that have been made generally on the evidence for the prosecution, which may be described as consisting in the main of—

- (1) the depositions of the shadowing witnesses :
- (2) the findings at the various searches ; and
- (3) the confessions and statements of certain of the appellants.

As regards the shadowing witnesses, we are asked to discard the evidence of the police spies *in toto* on the ground that their antecedents are disreputable and there are discrepancies in their statements. The testimony of the detective police-officers we are similarly urged to reject, because there are in it also inconsistencies

and assertions at variance with some apparent facts, and further because it is impossible to credit the explanation that the deponents were speaking from memory and had neither kept, nor referred to, any notes. We are asked to treat the findings at the various searches as spurious because of some irregularities connected with the preparation of the search-lists, a few mistakes made in connection with the custody of the different exhibits at the police-office, the unreliability of the search-witnesses, and certain points in some of the exhibits themselves which are said to be calculated to engender suspicion and raise doubt. I am unable to accept or act upon any of these suggestions.

That the evidence of police-spies must be listened to with caution is all that need be conceded with regard to the reflections cast on the characters of those employed in this case. But that their services were actually utilised, and that they were really doing something in the way of honest work, is abundantly clear. The discoveries made and the general results prove this ; and there are incidents which speak for themselves—such as those connected with the tracing of the enamelled bowls found in the garden to the shop at which some of the appellants were seen to have purchased such vessels, the rent receipt granted by the appellant Hem Chandra Das to the spy Shiba Kali Das for a room in the former's house and produced by the latter, and the acknowledgment given by the same spy to the same appellant for the refund of the same rent, a document which was discovered at the search of the house of Hem Chandra Das and initialled by him then and there. And, as to the flaws in the police evidence, these seem to me to be remarkably few and to sink into insignificance when the broad facts and the circumstances of the case are recalled. It is—and Mr. Norton has conceded that it is—clear that the statements made by the police-officers to the effect that they have been trusting to their memories alone, and not to contemporaneous writings at all, are not true ; but I believe that they are by no means as wide of the mark as Mr. Das, on the other hand, would have us conclude. The officers concerned were doubtless exaggerating ; but I can understand—although I deplore rather than condone—their having done so through anxiety to avoid any possible risk of their notes in an exceptional case such as this, where informers were concerned, being called for and their contents disclosed. It may be conceded, too, that there must have been some aids to memory and some means of refreshing it from time to time. But that there was very little in the way of writing beyond the so-called “diary” in the hands of the officer in immediate charge of the proceedings, I have no difficulty in believing. Nay more, I should myself be surprised to learn that, in a delicate and hazardous

enquiry such as that before us, extraordinary methods were not adopted and extraordinary precautions were not taken ; and the first departures from routine that suggest themselves to my intelligence in a matter where extreme secrecy at every step is essential, are recourse to verbal communications, instead of written reports and the substitution of the security afforded by memorising for the danger involved in keeping notes. That a record of the course of the investigation was maintained by the responsible officer for the time being in charge is not denied and that that record was made use of no one can doubt ; but that it was most jealously guarded and that the keeping of subsidiary records was discouraged, if not expressly forbidden, I should be prepared to take for granted. And of wonderful feats of memory on the part of witnesses not a few instances are within my personal experience. I recollect, and have recently referred to the record

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in this Court of a case,* tried in Chota Nagpore not long ago, in which an entirely illiterate Dusadh, examined as an approver, gave from memory, over and over again and most consistently, minute details regarding some 74 distinct burglaries and kindred offences committed in the course of 13 months at diverse places in 3 different districts by various members of a large gang to which he and the 15 accused tried on a charge under section 401 of the Indian Penal Code had belonged. I have not infrequently known an investigating police-officer refrain from refreshing his memory in Court from, and so placing within the reach of the defence, his confidential diary and rough record of the examination of witnesses on the spot, and yet stand successfully a severe cross-examination as to distances, and dates, and times, and previous statements connected with a complicated case. After all, the officers employed in this instance must have been specially selected ; they were doubtless relieved of all other work and warned to devote their attention and energies exclusively to the arduous and dangerous task imposed upon them ; and the area over which their memories had to range, was by no mean extensive. I believe—and, as I have already, said, I have no difficulty in believing—that they did practically without notes and relied upon their memories, refreshed most probably by references, through the officer in charge, to the so-called “diary” and verbal rehearsals. If that was the position, then it is inevitable that they should make some mistakes and contradict each other from time to time. But the more I peruse the record and the more I consider the circumstances, the more convinced am I that their evidence is in the main true ; that is, in other words, that they did see the persons they name visiting the places they specify, meeting the associates they mention, and taking part in the incidents they describe. Mr. Das has urged before us on appeal that the whole of the shadowing and tracking

is a fiction, that the police had no definite information worth the name to act upon, and that nothing real was being done all the time : whence it follows that it was by some unexplained and inexplicable stroke of good fortune that, when the police had to move immediately after the Mozafferpore outrage, they hit upon the garden, not to mention the other places simultaneously raided, and succeeded in laying their hands upon a number of unfortunate persons, collected together amid at first sight somewhat suspicious surroundings, who had been vaguely suspected of cherishing advanced ideas and aspirations. Then, but not till then, Mr. Das would have us believe, was the whole fabric of this case built up, piece by piece, to fit in with, support, and, where necessary, amplify, the damaging statements somehow or other obtained from the persons arrested. The shadowing witnesses were then taught to tell their stories accordingly and with special reference to points not fully disclosed and persons not sufficiently implicated by the confessions. Incriminating documents and questionable articles, prepared to order, were introduced *ex post facto* into appropriate places and produced therefrom as damning pieces of circumstantial evidence. *Et sic passim*. The argument is hardly worth meeting in detail, and a few observations in connection with it will suffice. It is certain that the enquiry and the proceedings throughout must have been directly guided by the highest officers of the Criminal Investigation and Police Departments, and Mr. Das's theories involve connivance at least on their part, which I regard as impossible. The confessions followed, and, therefore, could have had nothing to do with, the discovery of the principal places which were successfully raided on the 2nd May ; and, as Seal's Lodge was not alluded to in any of them, its discovery must be otherwise explained. That good and accurate information had been obtained from some person or persons who knew only too well what was on foot, is conclusively proved by the action taken on the warning as to the proposed attempt on Mr. Kingsford's life ; for, although that action failed to save Mrs. and Miss Kennedy, it was sufficient to cause the suicide of one of the assassins and lead to the speedy arrest of the other. Why, then, should it be doubted that the police had not equally definite information as to the other individuals and places towards whom and which they assert that their attention was directed ? Why should it be supposed that they had such information and did not take advantage of it ? And why should we believe, merely because it is suggested by the defence, that they were not endeavouring to bring to justice the guilty, of whom there must have been many, but were striving to make evidence against innocent, and, in some cases, entirely insignificant, persons ? The very nature of the evidence produced by the prosecution, and the want of discrimination with which it has been produced, bespeak its

gennineness. If the watch-witnesses were lying, surely they would have lied with greater effect and more to the purpose. It was the case for the prosecution that the arch-conspirator and protagonist was Mr. Arabinda Ghose, and Mr. Das has had occasion, again and again, to press that fact and Mr. Ghose's acquittal upon us. And yet not a single watch-witness has attempted to connect that gentleman physically with the garden, although it was the head-quarters of the conspiracy and he was admittedly a part-owner. Why? The only fair and reasonable answer surely is that they did not do so because they could not, having, as a matter of fact, never seen him in it: and, if so, why should they be disbelieved when they swear that they saw other comparatively unimportant persons there? Then let us survey the exhibits, and, in particular, the documents. *Primâ facie*, they certainly do not look like manufactured evidence, for manufactured evidence would have been given much more directly probative value. And the more they are scrutinised, the more certain does it become that they could not have been concocted; for, all along the line, one finds connecting links and indications such as render the theory of ingenious concoction preposterous. Is it, for example, not going too far to ask us to believe that the whole of that elaborate adjunct of the case for the prosecution which is connected with Seal's Lodge at Baidyanath, was evolved from nothing but the imagination merely in order that there should be found there a few pieces of tin, which might conceivably have been used in connection with the manufacture of explosives, an English chemist's label similar to labels unearthed at 15 Gopi Mohan Dutt's Lane and 134 Harrison Road, and certain documents, innocent in themselves, but capable of lending support to inferences, sometimes far-fetched, of the prosecution? Is it reasonable to suggest that evidence of the kind afforded by documents such as those alleged to have been found at the searches were not so found and must have been fabricated by astutely dishonest police-officers? Let us take, for example, Exhibit 76, the red note-book, produced from the garden, which appears to be the appellant Upendra Nath Banerjee's, and is, perhaps, the most prominent exhibit in the case. The entries contained in it are vague and disjointed, and the most one can do is to conjecture, in the light of other facts, what they may mean. Persons are, as a rule, indicated by their initials or first names, and, although in many an instance the cap fits the head of one of the appellants, the evidence so afforded is not the sort of evidence which a forger would produce. In the same book there is noted the name and address in full of one "Raj Kishore Mookerjee, 3 Bolaram Bose's 1st Lane, Bhawanipore". Now it is not desired to implicate anyone of that name or answering that description, and it is only in the following way that any significance can be attached to the note. Among a number of names and addresses mixed up

with explosive formulæ in Exhibit 667, a note-book found simultaneously at 134 Harrison Road, there is a reference to the same Raj Kishore Mookerjee, while in Exhibit 382, a list discovered, also simultaneously, at 15 Gopi Mohan Dutt's Lane, the identical name and address again appear. Is it at all reasonable to suggest that these were manufactured? Next let us take Exhibit 239, a note-book (found in the garden) which is full of cryptic entries attributed to Barendra and is second in prominence and importance only to Exhibit 76. In this there are, first, a number of initials and a distribution of these into "circles." Then comes a succession of notes, the meaning of which only the writer and those in his confidence could fully disclose, but we can merely surmise. These, as has already appeared, turn out to be by no means valueless; but the point which I am now making, is that it is inconceivable that such documents can be anything but genuine. In the same note-book, we find the sentence "Deodhar's and Athavel's address from S. G." Who Deodhar and Athavel are we do not know, and the case in no way rests upon, or is helped by, the connection with the conspiracy charged of any persons bearing those names. But it is nevertheless not without significance that in Exhibit 667, produced from 134 Harrison Road, there are entered the full names and addresses of "S. C. Athavale" and "A. B. Deodhar," while in Exhibit 798, postcard found in the appellant Hrishikesh Kanjilal's house near Serampore, someone, signing himself "R," writes from Bombay to Hrishikesh about a "Mr. Deodhar" preaching "the new cult," and Exhibit 382, the note-book kept at 15 Gopi Mohan Dutt's Lane, likewise contains the names and addresses of "Deodhar" and "Athavale." In Exhibit 239 again we find the following instructions noted for the 11th January and onwards:—"U. D. to be kept here. H. D. to be looked up. They spend a week together. Mss. from H. D." In Exhibit 382, the note-book found at No. 15, are two references to "H. D." each with an address which renders it certain that the appellant Hem Chandra Das is the person designated. Now, that Hem Chandra Das went to Paris to advance "the cause" is proved, and it appears that he returned to Bengal in December, 1907, or January, 1908. "U. D." are the initials of Ullaskar Dutt, and the appellant of that name had acquired some knowledge of explosives; but his was a prentice-hand, incapable, as the previous abortive attempts on the railway tend to show, of preparing an effective bomb. In the garden was found the manuscript of the cyclostyle manual intended for the edification of "a revolutionary people," and it bears signs of a French origin. In these circumstances, it is impossible to resist the inference that the result of "U. D.'s" and "H. D.'s" week together was the production of the bomb which killed the Kennedys on the 30th April, 1908, and for which the appellant Barendra has in his confession given the

credit to Hem Chandra Das and Ullaskar Dutt jointly. Another instruction jotted down in Exhibit 239 is "Core earth to be sent;" and traces of core earth, which is useful in connection with moulds for making shells, were found in the garden. "Dr. Dhude," the same instruction runs, is "to be kept in the garden;" and one of the memoranda found in Exhibit 382 at 15 Gopi Mohan Dutt's Lane, is "B. R. Dhudhe, Dr., Vyara, S. V. Ry.," a person of whom the prosecution evidently knows nothing more with reference to this case. In a note-book (Exhibit 381-2) discovered in the pocket of a shirt in the garden is a curious formula, which is exactly reproduced in the other note-book (Exhibit 382) found at No. 15. In the former book, again, there is a receipt for the postal money-order for Rs. 20 proved to have been sent to the Mozafferpore suicide, Dinesh Chandra Roy, *alias* Profulla Chaki. And the reference in Barendra's note-book (Exhibit 239) to "marriage expenses" (which cannot but have meant something else, as marrying and giving in marriage must have been very far from the thoughts of the inmates of the garden) attracts a sinister significance when read with Exhibit 150, a letter from Mozafferpore, signed "Dinesh Chandra Roy," which was found in the garden, and which refers apparently to Mr. Kingsford as "the bridegroom." These, I think, are but fair specimens of the mass of documentary evidence furnished against these appellants, and the genuineness of all of it is, to my mind, unimpeachable.

Then, as to the search-lists and search-witnesses, there can be no doubt but that the lists were not prepared as methodically and regularly as the police began by daring to assert, and the testimony borne by such of the search-witnesses as were called and examined—none of them need, under section 103 (2) of the Code of Criminal Procedure, 1898, have been produced at all—does not read convincingly. But the circumstances of the case must once more be remembered. In the garden alone the numbers of the exhibits run up to 282, and in many instances a single exhibit-number represents considerably more than one article. Thus Exhibit 9 is subdivided into Exhibits 9 (1) to 9 (3), being 3 rifles; Exhibit 10 is a miscellaneous lot, comprising a breech-loading gun, a muzzle-loading gun and a pair of bellows; Exhibit 27 represents ten different flasks of gunpowder, marked Exhibits 27 (1) to 27 (10); Exhibit 32 similarly covers 13 separate boxes of cartridges; Exhibit 93 includes 15 distinct plans; Exhibit 173 is a wooden box, in which were found, apparently amongst other things, 35 miscellaneous books and pamphlets; 8 false beards and 2 wigs are marked together as Exhibit 225; and Exhibit 281 is a large collection of papers and books. It becomes, therefore, at once apparent how difficult, if not impracticable, it must have been to attempt to

prepare, on the spot and in strict accordance with the rules and forms prescribed on the subject, a detailed list or catalogue *raisonne* of all these things; and one can readily understand that the work was begun in the garden, but it was found impossible to continue and complete it there, and it was decided to carry everything away to the police-office and have the items tabulated and examined at that place. And, as regards the search-witnesses, it is notorious that "respectable neighbours" are not always ready to assist even at ordinary searches, not to mention searches in a case of this kind. Having regard to these considerations, and looking in particular at the character of the findings, I am firmly of opinion that the searches and the discoveries were genuine throughout, that the police have honestly produced all that they actually found at each of the places raided, and nothing more, and that the prosecution has laid before the Court particularly everything for what it is worth. There is, indeed, an utter want of discrimination in this connection, which, while it does not, from one point of view, redound altogether to the credit of the Crown in an important trial as this, is nevertheless, as I have already remarked, eloquent as to the *bona fides* of the prosecution. In a word, the Crown has, as was, of course, only to be expected of it, come into Court, with clean hands, and a clearer, more straightforward case, notwithstanding its complex character and the difficult points arising in it, it has seldom been my lot to deal with. And I cannot leave this view of the evidence as a whole without expressing on my own account the opinion that this is a trial in which the police have shown themselves worthy of the confidence of the public, and from which they have emerged with credit.

There remain, in connection with the evidence, the confessions, which were recorded by the District Magistrate, Mr. Birley, shortly after the arrests, and which, I agree with the learned Chief Justice in holding, were admissible. The decision of the Full Bench of this Court in the *Empress v. Anuntram Singh** is now obsolete, and there is nothing in the present Procedure Code to incapacitate from recording a confession under section. 164 the magistrate who intends eventually to try the person confessing. I further concur in holding that the confessions were recorded under that section; for as a matter of fact, the police investigation had not come to an end, and the magisterial enquiry had not, and could not have, commenced, when Mr. Birley recorded them. I am also of opinion that even if section 164 were held to be inapplicable, the provisions of that section and of sections 342 and 364 of the Procedure Code are not exhaustive and do not limit the generality of section 21 of the Evidence Act as to

* (1880) I. L. R. 5 Cal. 954.

the relevance of admissions. Finally, as to the voluntary character of the confessions in this case, there can be no question. Mr. Birley is a magistrate of experience and standing, and he appears from the record itself, as well as from the evidence given by him on the point, to have done all that in him lay, and even more than the law expressly requires, to satisfy himself that they were genuine before he received them. He warned each person that he was a magistrate, and that any statement made to him might be used in evidence ; and he put direct questions as to the presence or absence of pressure. It is true that the confessing accused had been in police custody for some time ; but the chief of them, Barendra, had, immediately after the arrests in the garden, pointed out the most damning evidence on the spot, not only to the police, but to Major Black, I. M. S., the Chemical Examiner, also. Moreover, the education and intelligence of the accused, the tenor of their confessions, and specially the reasons for confessing vouchsafed by Barendra and repeated by some of the others, all point to the one conclusion that they were free agents. It has, however, been objected that their confessions were made in answer to enquiries, and that no question ought to have been put to any of them beyond some such initial query as—What do you wish to say, if anything ? Now, although section 29 of the Evidence Act expressly provides that a confession does not become irrelevant merely because it was made in reply to questions, no matter what their form, which need not have been answered, yet there can be no doubt but that a process of examination may detract from the voluntary character of the transaction, and that, where there is ground for thinking that there has been any such result, the confession is vitiated thereby. But here there is no reason to suspect anything of the kind, and the voluntary character of all the statements recorded by Mr. Birley stands unimpaired. Moreover, their truth has not to this day been denied by any of the appellants except Sudhir Kumar Sirkar and Krishna Jiban Sanyal. These two retracted their confessions and alleged police pressure when they were examined on the 13th August, 1908, prior to their commitment ; but the others contented themselves with bare and belated withdrawals made when the trial began in October. And I cannot accept the proposition, urged by Mr. Das, that in no circumstances is a magistrate justified in eliciting anything from a prisoner by independent enquiry. The examination provided for by section 342 of the Procedure Code is, no doubt, expressly and advisedly now confined to the object of “enabling the accused to explain any circumstances appearing in the evidence against him ;” but there is no such limitation placed by section 164, or by any other provision of law of which I am aware, and in the stage of investigation before any evidence has been recorded there is obviously no room for the limitation. At that stage, and, indeed, at any

point other than that indicated in section 342, the only thing that is abhorrent is pressure or inducement, and the sole criterion by which the fitness of an examination can, so far as I can see, be judged, is with reference to the question whether it was voluntary or not. Therefore, holding as I do, that Ullaskar Dutt, for example, was a ready and willing informant, I consider that the questions put to him were all proper questions, and that, when he was asked—"Have you anything else to say?"—and replied,—“If you question me, I can say”—, Mr. Birley not only was right in putting further questions to him in response to the invitation, but might reasonably have been found fault with, had he refrained from doing so. Similarly, when Barendra told the magistrate that he had supplied the Mozafferpore assassins with revolvers, the magistrate was, I think, justified in enquiring whence the revolvers had been obtained; while the reply—"I do not wish to say"—and its immediate acceptance as putting an end to the topic, show how scrupulously and admirably fair Mr. Birley's treatment of the prisoner was.

I have one remark more to make regarding confessions before I leave the subject. For very obvious reasons, there can be no surer foundation for conviction. But, for equally obvious reasons, they have always been, and always will be, regarded by Judges with suspicion; and I trust that nothing I have said in this judgment will be viewed as an incentive to the police to aim at securing evidence of this class. My remarks should, therefore, be read with reference to the particular confessions before us, most, if not all, of which, may be said to be *sui generis*.

Various other points of law have been raised in the course of the argument at the Bar, and as to most of them, all I need say is that I concur with the learned Chief Justice. There are, however, three which I have special reasons for desiring to notice.

First, Mr. Das has contended that the Criminal Procedure Code, in so far as it interferes with the indefeasible right of every British subject, be he European or Indian, to be tried by jury, is void as being *ultra vires* of the Indian legislature; and my lord the Chief Justice has disposed of the contention by pointing out that a similar objection recently failed before a Special Bench of three Judges of this Court, constituted under section 11 of the Indian Criminal Law Amendment Act of 1908 to try the case of the *King-Emperor v. Kartik Chandra Dutt* and others. As that case has not been reported, as I was a member of the Special Bench by which it was tried, as the decision in it was arrived at by us sitting on the Original Side, and as Mr. Das pressed his contention in all seriousness, with great skill, and at considerable length, I cannot refrain from dealing further with the point.

Shortly put, Mr. Das's argument is based upon section 22 of the Indian Councils Act, 1861 (24 & 25 Vict., c. 67), where it stands enacted by Parliament that "the Governor General in Council shall not have the power of making any laws and regulations which shall repeal or in any way affect * * * any part of the unwritten laws or constitution of the United Kingdom of Great Britain and Ireland whereon may depend in any degree the allegiance of any person to the Crown of the United Kingdom." And he argues that, as allegiance and protection are reciprocally due from the subject and the Sovereign and cannot be separated, any law which attempts to take away the Sovereign's protection by infringing such a right, conferred to secure the liberty of the subject, as the right of trial by jury, at the same time relaxes the duty of the subject, to observe allegiance towards his Sovereign, and is, therefore, *ultra vires*. Precisely the same line of argument was followed in 1870, once on the Original Side of this Court and again on the Appellate, in the well known case of *Ameer Khan** in connection with the question whether a writ of *habeas corpus* could be issued in respect of the detention in the mufassal of a Muhammadan subject of the Crown under the State Prisoners' Regulation of 1818 and the State Prisoners' Act of 1858; and I cannot do better than quote from the judgments then given by Phear and Markby, JJ., when dismissing the appeal from the decision of Norman, J., refusing to issue the writ. The Statute under consideration on that occasion was section 43 of the Government of India Act, 1833 (3 & 4 Will. 4, c. 85); but the language was, word for word, the same as that reproduced above from the Statute of 1861, which in this respect merely repealed and re-enacted the earlier provision. Mr. Justice Phear—see p. 477 of the report—thought that the words in question "I did not refer to any assumed conditions precedent to be performed by or on behalf of the Crown as necessary to found the allegiance of the subject, but to laws or principles which prescribed the nature of the allegiance;" and he went on to say that "the learned Counsel appeared to him at this stage of his argument to be endeavouring to convert a political sentiment into a principle of law." And Mr. Justice Markby—see pp. 481, 482—followed with these trenchant observations:—

"It is said that the Act of 1858 was an excess of the power conferred upon the Indian legislature * * * because it affects that part of the unwritten law or constitution whereon allegiance depends. * * * The restriction * * * is certainly couched in language to the last degree vague and obscure. Possibly a search into the discussions which preceded the Act, might suggest

* 6 B. L. R., (1870) 392 and 459.

a meaning; but I think that is a dangerous method of interpretation, and I would rather not resort to it. I think this objection is sufficiently answered by what appears to me to be a very clear principle; namely that the allegiance of a British subject in no way whatever depends on the existence of such a power as is conferred on the Governor-General by the Regulation of 1818. I wholly repudiate the doctrine contended for, that the allegiance of a subject to his Sovereign can by any possibility be legally affected by the mere withdrawal from the subject of any right, privilege or immunity whatsoever. I think the notion of reciprocity expressed in the maxim *protectio trahit subjectionem et subjectio protionem*, upon which this argument depends, is one which is wholly inadmissible in any legal consideration."

These remarks I would adopt and apply *mutatis mutandis*, to Mr. Das's contention in this case. Moreover, trial by jury as known to the common law of England—that is to say, trial by the unanimous voice of twelve of one's peers—is unknown in India; and it seemed to Mr. Justice Harrington, Mr. Justice Mookerjee and myself last March, as it seems to me today, that it is too late now to question the validity of every law regulating criminal procedure that has been enacted in this country under the Statutes of 1833 and 1861, and the legality of every trial held whether by jury or with the aid of assessors in the maffassal, or by jury before the Supreme or the High Court, during the last seventy-six years at least.

Secondly, as regards the question of waiver, I agree in thinking it settled by authority—see the decision of this Court in 1880 *In the matter of the petition of Quiros*,* followed in 1888 by the Bombay High Court in the *Queen-Empress v. J. Grant*,† and in 1892 by the Madras High Court in *Queen-Empress v. Bartlett*,‡—that an European British subject can relinquish his right to be tried as such, and that the appellant Barendra Kumar Ghose did so. And I would add that he seems to have acted deliberately and after the fullest warning and explanation of the position.

And, thirdly, I agree in considering that the expression "wages war," which is used in section 121 of the Penal Code, must be construed in its ordinary sense as a phrase in common use in the English language, and that it is impossible to hold that any of the overt acts alleged in this case amount to the offence provided for by that section. The charge thereunder, therefore, fails on the merits, and the death sentences passed on Barendra Kumar Ghose and Ullaskar Dutt cannot be confirmed. I also think that

* (1880) I. L. R. 6, Cal. 83.

† (1888) I. L. R. 12, Bom. 61.

‡ (1892) I. L. R. 16, Mad. 308.

there was no valid authority for the prosecution of the first batch of the accused on that charge, and I would endorse all the principles laid down by the learned Chief Justice in this connection; but, as his Lordship has indicated, a decision on the point is not, in the view which we take of the offence concerned, essential.

It remains for me now only to refer to the cases of the appellants individually. As regards (1) Barendra Kumar Ghose, (2) Ullaskar Dutt, (3) Upendra Nath Banerjee, (4) Hem Chandra Das, (5) Bibhuti Bhusan Sircar, (6) Hrishikesh Kanjilal, (7) Indu Bhushan Roy (8) Abinash Chandra Bhattacharji, (9) Nirapada Roy, (10) Sisir Kumar Ghose, (11) Poresch Chandra Maulik, and (12) Sudhir Kumar Sircar, I agree throughout with the learned Chief Justice, both in respect of the offences charged and in respect of the reduction of some of the sentences proposed now that the conviction for waging war, for which the minimum penalty fixed by law is transportation for life, has been ruled out. And as to (13) Balkrishna Hari Kane, I also concur in thinking that there is room for considerable doubt, to the benefit of which he is of course entitled. But as regards the remaining five, namely, Susil Kumar Sen, Birendra Chandra Sen, Krishna Jiban Sanyal, Sailendra Nath Bose and Indranath Nandi, I regret that, for reasons which I have recorded separately, I cannot bring myself into agreement with my Lord.

His Lordships then gave his reasons for differing in the case of these 5 appellants.

In conclusion, I venture expressly to associate myself with the remarks made by his Lordship as to the assistance which we have received from both sides, and the manner in which the case for the appellants has been laid before us.

The 23rd November, 1909.

H. W. C. CARNDUFF.

THE REFERENCE.

BEFORE JUSTICE

SIR RICHARD HARRINGTON, BART.

FOR THE CROWN :—

MR. G. H. B. KENRICK, K.C.

Advocate-General.

„ HARRY STOKES,

Counsel.

BABU ATULYA CHARAN BOSE,

Vakil.

SOLICITORS :—ORR. DIGNAM & CO.,

FOR DEFENCE :—

Babu Bejoy Krishna Bose, { Krishna Jiban Sanyal
Vakil for &
Sailendra Nath Bose.

„ Nagendra N. Banerjea, { Sushil Krishna Sen
Vakil for &
Birendra Chandra Sen.

Mr. B. Chakravarti }
„ Monmotho N. Mukerji } For Indra N. Nundy.

As there was a difference of opinion between their Lordships the Chief Justice and Mr. Justice Carnduff in respect of five of the Appellants, viz., Krishna Jiban Sanyal, Sailendra Nath Bose, Indra Nath Nundy, Birendra Chandra Sen and Sushil Kumar Sen, their cases were referred for decision before a third Judge of the Hon'ble High Court, Sir Richard Harrington, Bart. The hearing



Justice Sir Richard Harrington Bart

of the Reference commenced on the 3rd January 1910 and fully occupied the time of the Court for over a month. The two leading Counsel on the opposite sides Messrs. E. Norton and C. R. Das could not appear owing to other engagements. The newly arrived Advocate-General Mr. G. H. B. Kenrick, K.C., appeared for the Crown.

FIRST DAY'S PROCEEDINGS.

Babu Bejoy Krishna Bose in opening the case said that the case for the prosecution was that the appellants were members of a gang whose object was to wage war against the King-Emperor and several places were mentioned by the prosecution as the haunt of the conspiracy. In pursuance of that conspiracy five overt acts were committed. Of those five two were futile attempts upon the train carrying Sir Andrew Fraser, late Lieutenant Governor of Bengal, near Chandernagar on the East Indian Railway. The police had no information of these two attempts and they came to know of them when confessions were made by Barindra Kumar Ghose and Ullaskar Dutt. The third overt act was known as the Narainghar outrage which happened on the 5th December, 1907. In this connection it was alleged that a mine exploded beneath the train in which Sir Andrew Fraser was travelling from Puri to Calcutta. So far as this overt act was concerned what happened was this.—At that time several coolies were arrested by the police, who made confessions and were convicted. Afterwards Barin made a confession taking the whole responsibility upon himself and denying that he ever took the help of any coolie. The fourth overt act happened on the 11th April, 1908, in which a futile attempt was made on the life of the Mayor of Chandernagore. On the 30th April, 1908, the last overt act, known as the Muzafferpur outrage, was committed. In this case by mistake a bomb was thrown on the carriage of Mrs. and Miss Kennedy and they were killed.

Thereafter on the 2nd May, 1908, searches were made at 32, Mooraripukur Road, 15, Gopi Mohan Dutt's Lane, 48, Grey Street, 38-4, Raja Nabakishen Street, 134, Harrison Road, 4, Harrison Road and 23, Scott's Lane. Several arrests were made also that day. Krishnajibon Sanyal was arrested at Malda on the 12th May. Sailendra Nath Bose was arrested at 48, Grey Street on the 2nd May. Susil Kumar Sen and Birendra Sen were arrested at Sylhet on the 15th May. On the 23rd June Indra Nath Nandi was arrested in Calcutta. All the accused thus arrested were placed on trial before Mr. Birley, District Magistrate of Alipur, who committed thirty-eight persons to the Court of Sessions, two of whom were subsequently let off. Out of the

thirtysix the Sessions Judge convicted nineteen and acquitted the rest. The assessors who assisted the Sessions Judge, found Sailendra Nath Bose, Birendra Chandra Sen, Indra Nath Nandy, Susil Kumar Sen and Krishna Jiban Sanyal, not guilty but the Sessions Judge disagreeing with the Assessors convicted the accused and sentenced the first three to transportation for life, the fourth to seven years' transportation and the last to one year's rigorous imprisonment. The nineteen convicted persons then preferred an appeal to the High Court and while the case against them was pending before the Chief Justice and Mr. Justice Curnduff one of the appellants, Asoke Chandra Nandy, died. Their Lordships after hearing both sides agreed with regard to thirteen persons and upheld the convictions passed against twelve of them reducing their sentences. One of them, Bal Krishna Hari Kane, was acquitted by their Lordships. With regard to the present five appellants the Chief Justice was of opinion that they should be acquitted. Mr. Justice Carnduff, however, was for upholding the conviction but for reducing the sentence in the case of Sailendra Nath Bose, Birendra Chandra Sen and Indra Nath Nandi so far as the charge under section 121 of the Indian Penal Code was concerned, namely waging war. Their Lordships were of opinion that the prosecution had failed to prove that charge both on facts and on points of law, and as section 122 formed part of Section 121 that section also according to their Lordships, did not apply: Mr. Justice Carnduff, however, found the five appellants guilty under Section 121 A.

Babu Bejoy Krishna Bose then went on to deal with the case against his clients and had not concluded when the Court rose for the day.

SECOND DAY'S PROCEEDINGS.

His Lordship resumed the further hearing of the Alipore bomb case reference when Babu Bejoy Krishna Bose continued his argument on behalf of Sailendra Nath Bose and Krishnajibon Sanyal.

The Vakil observed that the Muraripukar garden was used as a monastery for imparting religious and political training, and the Goabagan house was used for making bombs in November and December. This was evident from the confessions of Ullaskar Dutt and Rishikesh Kanjilal. The appellants were found in the garden in the garb of Sanyasis. It was also in evidence and that was the case for the prosecution that new recruits were given religious training at first and afterwards they were gradually acquainted with the objects of the society. Krishnajibon went to the garden in the middle of October. Moreover there was nothing in the garden, as admitted by the prosecution, to arouse suspicion. There was

nothing unusual when it was said that Krishnajibhan went to the garden to learn *Geeta*.

Regarding Sailendra's connection with the *Yugantar* the vakil said that being a co-villager of Abinash Chander Bhattacharjee, manager of the *Yugantar*, he was for some time in the *Yugantar* office. It was true that for a short time he was sub-manager of that paper, but there was no evidence to show that Sailendra had anything to do with the policy of the paper. It could not be said that because a man was found in the *Yugantar* office he was guilty. Dindayal Bose who lived in that office was acquitted. Not a scrap of paper was found in *Yugantar* searches which bore the name of Sailendra Bose. Much had been made by the prosecution in respect of a post card found in 48, Grey Street. This was a *Yugantar* post card on which Sailendra was said to have written a letter to a friend of his. The post card bore the name of *Yugantar* and a couplet from the *Geeta* in which Sri Krishna said that he would appear again and again on this earth to save the holy and destroy the wicked. Mr. Justice Carnduff in his judgment had said that the mere fact of his using the *Yugantar* postcard showed that Sailendra had a great liking for those postcards. The vakil said that there was evidence to show that these postcards were extensively sold in the market. A search-witness Serajuddin deposed that he had purchased several such postcards from hawkers. Apparently they had nothing to do with the *Yugantar*.

Referring to Sailendra's association with other members of the society the vakil observed that no doubt his association with Abinash Chandra Bhattacharjee, a leading conspirator, told against Sailendra but that in itself did not prove his guilt. Both Abinash and Sailendra came from the same village Arbalia and it was no wonder that from time to time they lived together. Both the Assessors found him not guilty of all the charges but the Sessions Judge disposed of his case in a few short sentences. The Chief Justice observed that he had considerable anxiety in his mind because of Sailendra's connection with the *Yugantar*. The vakil submitted that, for this accidental connection with the *Yugantar* undue suspicion should not be attached.

As regards Sailendra's connection with the Seal's Lodge, the vakil submitted that this connection was based on the evidence of only one witness. Hiralal, a postal clerk, and formerly postmaster of Rohini post office, identified Sailendra as one of the persons living in the Seal's Lodge. This witness was at Rohini only for five weeks and he was not cross-examined on behalf of Sailendra as he was unrepresented at that time. Sailendra was not identified by the post peon who usually came to the Seal's Lodge to deliver letters nor by the next-door neighbour who was cited by the prosecution.

Of the documentary evidence there was only one against Sailendra. It was exhibit 78 found in the garden inside a note book. This document bore the signature "S.B." The vakil submitted it did not necessarily refer to Sailendra. It might refer to Sailendra Bose of Midnapore who was hanged for the murder of the approver or it might refer to Sudhir Kumar Bagchi Sircar.

Regarding oral evidence the vakil submitted that a watch witness said that he saw Sailendra at the garden. He identified Sailendra generally. Although he gave a graphic description of everything he saw in the garden from 20th April to 26th April he did not mention Sailendra's name in any of his reports. This was not because he did not know Sailendra, for he had admitted that he heard his name in March. He said he saw Sailendra entering the garden from Duni Seal's garden, but it was in evidence that the gate of the garden was not visible from Duni Seal's garden. The Sessions Judge and the Assessors visited the garden and they were also of the same opinion. Evidently this witness was not a truthful witness. The vakil next read passages from the evidence of other watch witnesses who spoke in regard to Sailendra.

THIRD DAY'S PROCEEDINGS.

The further hearing of the Alipore Bomb case was resumed on the 5th Jan. 1910 when Babu Nagendra Nath Banerjee, Vakil, addressing the Court on behalf of Susil Kumar Sen and Birendra Chundra Sen said that he would first deal with the case against Susil Kumar Sen. So far as the watch witnesses were concerned no reliance could be placed on them. The Sessions Judge in his judgment had said that no reliance could be placed on the evidence of the watch witnesses. Mr. Justice Carnduff, however, was of opinion that the watch witnesses were entitled to consideration. Mr. Justice Carnduff had not the advantage of seeing the witnesses which the Sessions Judge had and as the Sessions Judge after hearing the evidence of the watch witnesses could not rely upon them the vakil submitted that the Court would not accept that.

Regarding the exhibits that were found in Calcutta the Vakil submitted that those exhibits were no evidence against Susil because in the first place they were not found in Susil's possession, secondly none of them were found to be in Susil's handwriting, and lastly, there was nothing in those exhibits to indicate that the name "Susil" therein meant Susil Kumar Sen, the present appellant. The Crown wanted to put that evidence against Susil under Section 10 of the Evidence Act. But before the Crown could reasonably place that evidence under section 10 they must make out a case to show that there was a reasonable ground for believing that Susil was a conspirator. Unless and until that was found

from other evidence, section 10 would not be applicable. So far as the exhibits and documents, found at Sylhet were concerned, they did not raise any reasonable belief that Susil was connected with the conspiracy, which was headed by Barindra Kumar Ghose. A mass of documents was found at Sylhet, but in none of them was mentioned the name of any conspirator or any of the places of the conspiracy. No doubt some of the books found there contained formulæ for explosives, but these formulæ did not in any way correspond with any of the formulæ that were found in the Calcutta searches. The case against Susil Kumar stood quite aloof from the case of others. Further an examination of the documents found in Calcutta would prove that they were not conclusive evidence against Susil. The vakil then went on dealing with the exhibits that were found in Calcutta.

Dealing with the case of Birendra Chandra Sen, the vakil said that the appellant was not arrested in consequence of any instructions from Calcutta. He was arrested by Mr. Komp, District Superintendent of Police, on his own initiative after the search of the house in which the appellant lived with his father. The evidence of the watch witnesses regarding Biren's visit to the garden was absolutely untrue and was not relied on by the Sessions Judge. On the other hand, there were numerous documents to prove conclusively that he was in his house in Sylhet in the month of April. The letter written by the appellant to the Principal of the National College, and the reply thereto proved that Biren was at that time at Sylhet. The rest of the evidence against the appellant fell under two heads, namely, the findings at Sylhet and the documents in Calcutta. The findings at Sylhet did not in any way connect the appellant with the Calcutta conspiracy, while the documents in Calcutta were inadmissible against him as they were not found in his possession nor were they in his handwriting.

The vakil then referred to several exhibits in the case and had not concluded when the Court rose for the day.

FOURTH DAY'S PROCEEDINGS.

The further hearing of the Reference in the Alipore Bomb case was resumed to-day.

Mr. B. Chuckraverty, who appeared with Babus Dasarathi Sanyal and Debendra Chandra Bhattacharjee, on behalf of Indra Nath Nandy, addressing the Court said that his client was convicted by the Sessions Judge in disagreement with the Assessors, under Sections 121, 121 (A) and 122 of the Indian Penal Code and was sentenced to transportation for life. The Assessors were for acquitting Indra Nath. The case for the Crown in connection

with this appellant rested mainly on the evidence of two witnesses, Sarat Chandra Das, an eating house-keeper, and a police head constable, who said that they had seen Indra Nath in the garden, which according to the prosecution was the seat of the conspiracy. Counsel mentioned in passing that the oral evidence against his client has been disregarded both by the Sessions Judge and the two Assessors as well as by the Chief Justice. Mr. Justice Carnduff, on the other hand, relied upon it and found the appellant guilty. The second piece of evidence used against his client was the order of the Magistrate of Jamalpur, dated April, 1906, binding Indra Nath to keep the peace under section 107 of the Criminal Procedure Code. The third piece of evidence was a finding in 15, Gopi Mohan Dutt's Lane, which was supposed to connect Indra Nath with one of the members of the conspiracy. Then there were four documents alleged to have been found in the garden which were also supposed to incriminate him and connect him with the garden. Then again he was connected with an institution referred to in these proceedings as Chhatra Bhandar, which was a limited liability trading company, and through it indirectly with the "*Jugantar*." Further reliance was placed upon the alleged explosion of gun-powder at 37, College Street, a house in which the appellant used to live with his parents and other members of his family. Counsel said that the evidence with regard to this incident was absolutely circumstantial. Lastly, certain letters and articles, which were found at 4, Raja's Lane, were supposed to connect Indra Nath with a man, named Taranath Chowdhury, who is an absconder and who is not, therefore, tried in connection with this case. The present appellant was not arrested until the 23rd June, 1908, although the police were in possession of all materials relevant to the charge against him from the 2nd of May, 1908. The first information in this case was lodged by Inspector Purna Chandra Biswas on the 17th May before Mr. Birley, District Magistrate of Alipore. It was alleged that on the 1st May the police received an anonymous communication with regard to the alleged explosion. They made enquiries but in the end it came to nothing. In the meantime the case against the first batch of prisoners went on regularly and the documents and materials which were found were all put in in connection with them. On the 19th May without any warrant of arrest, without any complaint to any Magistrate a search was made at 4, Raja's Lane and certain letters, a quantity of ammunition and arms were taken possession of by the police and the owner of the house was practically kept under arrest until he gave evidence in the Sessions Court. Before any authority to prosecute was received from the Government or any attempt to obtain one was made the police on the 23rd June, 1908, suddenly raided premises No. 37, College Street and arrested the appellant without any warrant or process, although the articles which were

found at the search were not in any way incriminating. On the 27th June the first sanction was obtained from the Government and on the 29th June some of the articles which were found at the search of 37, College Street on the 23rd of that month, were sent to the Chemical Examiner for analysis. On the 9th July, Purna Chandra Biswas laid a complaint against the second batch of prisoners. On the 10th of July the report from the Chemical Examiner was received and on the 24th August the second sanction from Government was obtained in regard to Section 121 and the preliminary enquiry for a commitment proceeded. Sometime in October, 1907, it was said that Inspector Soshi Bhushan Day got information with regard to the existence of a Secret Society in Calcutta and Purna Chandra Biswas said that he knew of the existence of such a society on the 28th of January, 1908. About the middle of March a number of police officers were told off to watch various places, amongst others the garden and 15, Gopi Mohan Dutt's Lane. It was in evidence that there were about 24 investigating police officers who had something or other to do with the shadowing or following of various people, and it was evidently clear from the records that almost all of them had been called to give evidence in this case, but not one of them had ever suggested that he had seen Indra Nath at any of the places of conspiracy or that he had been seen associating with the men in the garden or elsewhere or with the men who had been connected with the conspiracy, or with regard to whom there was a suspicion that he was a conspirator. It was not suggested by any of the officers that the name of Indra Nath was ever mentioned to him as being a person connected with the conspiracy. Certain correspondence were put in by the Crown as evidence against Indra Nath and they did not prove any connection of Indranath with anybody during the period of twelve months from May, 1907, to May, 1908, the period covered by the charge.

FIFTH DAY'S PROCEEDINGS.

The further hearing of the Alipore Bomb Case reference was resumed to-day when the Advocate-General, who appeared in support of the conviction, said that it was scarcely necessary for him to emphasise the exceptional gravity and importance of this case, the investigation of which from its initial stages up to the present time had occupied very nearly two years. The case was of the utmost importance from the point of view not only of the five accused, who stood at present convicted of conspiracy and sentenced to varying terms of transportation and each of whom had received from his Lordship's hands a most patient hearing; it was no less important from the point of view of the public and for the vindication of the administration of criminal justice in India.

One must feel at the outset the greatest responsibility for all who were concerned in this investigation, including Counsel who represented the appellants. The responsibility in this case was no less on the learned Judge, who ultimately became the arbiter of the case. Counsel said that he would in this case present the facts and arguments with fairness and moderation from the point of view of one who had the advantage of coming to India without any local prejudices. The case before the Court was a reference under section 429 of the Criminal Procedure Code and the investigation represented the procedure where the Judges on appeal in a criminal case, were equally divided in their opinion, and such cases are sent before another Judge of the same Court. Having regard to a remark that fell from one of the representatives of the appellants, Counsel would like to indicate the functions of the Judge to whom such a case was referred. *Ex hypothesi* there must be difference of judicial opinion and the legislature had advisedly imposed upon the Judge the duty of arriving at an independent judgment and consider the probative effect of the evidence. It followed from that that it was not a legitimate argument on behalf of the defence to say that there must necessarily be doubt as to the guilt because the Judges had differed. The position was this. To upset the conviction the Third Judge must be regarded essentially as part of the component tribunal and he must find that there was reasonable doubt upon the evidence on which these persons had been convicted, for it must be remembered that these five appellants had been convicted by the Sessions Judge after a very lengthy and extraordinarily patient hearing, and it must also be remembered that the Judge had the very great advantage of watching and observing the demeanour of the witnesses who were presented on the part of the prosecution and the convictions of these five appellants had been affirmed by Mr. Justice Carnduff. The learned Chief Justice differed from him in his conclusions as to the probative effect of the evidence in these five cases. Mr. Chakerverty had referred to Mr. Justice Carnduff's judgment as a dissenting one. Counsel ventured to think that that was a totally inaccurate description. Any one or both might be regarded as dissentient Judges. The onus lay on the appellants to satisfy the Court that the evidence which had been accepted by the Sessions Judge and upon which he had acted and convicted the accused failed to afford adequate ground for such a conviction. Counsel then dwelt on the nature of the charges against the appellants and observed that in proving conspiracy circumstantial evidence might be sufficient but in this case they had more than circumstantial evidence.

Counsel then went on dealing with the evidence in the case and had not concluded when the Court rose for the day.

SIXTH DAY'S PROCEEDINGS.

His Lordship resumed the further hearing of the reference in the Alipore Bomb Case. The Advocate General continuing his argument on behalf of the Crown narrated the overt acts. He began with the attempted bomb outrage at the house of the Mayor of Chundernagore. It was in evidence that in the first week of April three bombs were sent to Indra. It had been proved that the bombs that were thrown at the Mayor's house contained sulphide of lead. The usual ingredient used in bomb-making was sulphide of antimony. There was nothing to show why this departure was made in this case. It was proved that the black powder that was found in the house of the Sen Brothers of Sylhet also contained sulphide of lead. The black detonating powder, found at 134, Harrison Road, another centre of conspiracy, also contained sulphide of lead. It was a curious coincidence that in all these centres of conspiracy sulphide of lead was found. The next overt act was perpetrated on the 30th April. This unfortunate occurrence was known as the Muzafferpur bomb outrage in which two innocent ladies were the victims. It was clear that the aim of the conspirators was the life of Mr. Kingsford who as the Chief Presidency Magistrate, had convicted on various occasions the seditious newspapers. He had also sentenced Susil, one of the appellants before his Lordship, to be whipped for assaulting police outside the Court compound during the hearing of one of these sedition cases. This was followed by long correspondence in which Mr. Kingsford was described as a "butcher magistrate" and Susil was belauded as a patriot. Of the two actors in the Mozafferpur outrage, one was hanged and the other committed suicide. But the real moral guilt lay on the instigators though the actual murders were committed by the two misguided youths. The real instigator was Barin and the Advocate General would not understand how Barin could escape a trial under Section 302 of the Indian Penal Code. It was in the confession of Barin that the bomb used at Muzafferpur was prepared by Hem Chunder Das and Ullaskar Dutt, at 15, Gopi Mohan Dutt's Lane, another centre of conspiracy. Then on the 6th or 7th of May occurred an explosion of gunpowder at 37 College Street in the house of Colonel Nundy in the room occupied by the appellant Indra Nath Nandi. On the 12th April Krishna Jiban was arrested and on the 15th May the two Sen Brothers were also arrested. Then followed the Magisterial enquiry during which period the approver Gossain was murdered. On 21st September commitment order was passed and the trial commenced before the Sessions Judge. During the period there was another murder and the victim in this occasion was Mr. Biswas, the public prosecutor,

The Advocate General next referred to the charge. The only charge on which the Crown relied was that of conspiracy for the purpose of subversion of Government under section 121A. The Advocate General then dealt with the individual cases and had not concluded when the Court rose for the day.

SEVENTH DAY'S PROCEEDINGS.

HIS Lordship resumed the further hearing of the reference in the above case.

The Advocate General continuing his arguments on the nature and existence of the conspiracy dealt with the documentary evidence found at the garden and 15, Gopi Mohan Dutt's Lane. Amongst those found at the garden was a cyclostyled copy of instructions couched in the most popular style, for the manufacture of various kinds of bombs and explosives. Counsel next referred to the evidence relating to the various acts of violence committed by the conspirators in consequence of the existence of a secret society at the garden. He next dealt on the nature of the collection of arms and ammunition found at the garden and had not finished his arguments on the exhibits found at 134, Harrison Road, when the Court adjourned.

EIGHTH DAY'S PROCEEDINGS.

HIS Lordship resumed the further hearing of the reference in the Alipore Bomb Case.

The Advocate-General continuing his address, referred to some more incriminating evidence against Krishnajibai Sanyal. He then took up the case of the appellant Sailendra Nath Bose who was convicted by the Sessions Judge of Alipore under sections 121A. and 122 of the Indian Penal Code and sentenced to transportation for life. The case against this appellant, said the Advocate-General, was simple. There was ample evidence to prove his connection with the garden, No. 48, Grey Street, the *Yugantar* and Seal's Lodge at Deoghur. To show this appellant's connection with the garden, the Advocate-General referred to the evidence of the shadowing witnesses. He read some letters which were exhibited in the lower Court shewing that the appellant lived at No. 48, Grey Street, one of the centres of the conspiracy. As regards the connection of the appellant with the *Yugantar*, the Advocate-General said that Sailendra was the assistant manager of that paper and as such he had a hand in conducting that paper. Sailendra assaulted Inspector Percy when on the 7th of August the latter went to search the *Yugantar* office. Regarding Sailendra's connection with Seal's

Lodge, the Advocate-General referred to the evidence of the postmaster of Rohini and said that although the post master was not able to give the name of the appellant correctly he was able to identify him from among a number of the accused. This was a very significant fact and it showed that the post master did not get any instructions from the police. If the post master had been under the influence of the police the latter would have certainly told him the real name of the accused. It had been argued by the defence that the evidence of the postmaster was not reliable. The Advocate-General said that if there was any doubt in his Lordship's mind about this witness he was ready to give the appellant the benefit of that doubt and his Lordship could eliminate this witness' evidence altogether. Even then there was the appellant's connection with the *Jugantar* and other centres of the conspiracy about which there was no doubt.

The Advocate-General next referred to several letters and the exhibits incriminating Sailendra and had not concluded when the Court rose for the day.

NINTH DAY'S PROCEEDINGS.

His Lordship resumed the further hearing of the reference in the Alipore Bomb Case. The Advocate-General continuing his argument on behalf of the prosecution took up the case against Susil Chunder Sen who was convicted under section 121(A) of the Indian Penal Code and sentenced to seven years' transportation. The Advocate-General referred to the appellant's connection with the centres of conspiracy, the garden and 134 Harrison Road. The black powder found in his house at Sylhet was the same as was used in making bombs and also found at the garden, 15, Gopi Mohan Dutt's Lane, and at 134, Harrison Road. Susil's brother Biren was living at 128-3, Karanibagan Road and letters written by Susil were found in the garden which had reference to Biren's address. The Advocate-General was reading those letters when the Court rose for the day.

TENTH DAY'S PROCEEDINGS.

His Lordship resumed the further hearing of the reference in the Alipore Bomb Case.

The Advocate-General, continuing his argument in the case against the Sen Brothers, referred to a letter written by Hem Chandra Sen, the elder brother, to Susil and Biren, the appellants. This letter was found in the possession of Susil at Sylhet. On the envelop was the address, 128-1, Keranibagan Road and dated April 1908. This letter gave colour to the fact that Biren was

going to Japan. The letter showed that Susil, a boy of 16 years of age, had left school and had no occupation. Still he was in Calcutta and took interest in the political movement. He took interest in the prosecution of Bepin Chandra Pal. He was a constant reader of *Sandhya* and took part in a seditious riot outside the Police Court and was whipped by order of the Magistrate which evidently had no effect on him. The defence had taken a monstrous line in regard to this letter although it had been shown that Hem was the elder brother and Biren was living at Keranibagan at that time. The defence had asked his Lordship not to believe this because the handwriting was not proved.

The Advocate-General then referred to several other letters incriminating the two Sen brothers and had not concluded when the Court rose.

ELEVENTH DAY'S PROCEEDINGS.

His Lordship resumed the further hearing of the reference in the Alipore Bomb case. The Advocate-General continuing his argument in the case against Birendra Chunder Sen, one of the Sen brothers of Sylhet, referred to the various exhibits against this accused. The book of explosive compound and the powder found at Sylhet incriminated this accused. Besides those there was the statement which Biren made before Mr. Kemp, District Superintendent of Police, to the effect that he had borrowed Rs. 8 from Barindra Kumar Ghose. This could not be concocted by the police for it was amply corroborated by the postal money order receipt which was exhibited in this case and it showed clearly the accused's connection with the conspirators. Then again there was the brown canvas bag which was similar to the one found at 134 Harrison Road and also to that found at Muzufferpore. That bag contained letters each of which breathed sedition. It had been said by the defence that the presence of the powder was due to the fact that Hem, the elder brother of the appellant, interested himself in match making and mining operations. The Advocate General asked, "did it explain the statement made by Biren or did it explain the presence of the red pepper or did it explain the presence of highly explosive substances found in the hut of the appellant." The Advocate-General then referred to other incriminating evidence against Biren and had not concluded when the Court rose for the day.

TWELVTH DAY'S PROCEEDINGS.

His Lordship resumed the hearing of the reference when the Advocate-General continued to deal with the case against Susil Kumar Sen, one of the Sen Brothers of Sylhet.

While the Advocate-General was referring to the formulæ contained in two notes found at Sylhet, his Lordship enquired whether there was anything to show that these formulæ tallied with those found in the garden at Calcutta.

The Advocate-General replied that exhibit 34, a book on "Explosives" found in the garden, contained word for word the formulæ found in the Sylhet exhibits and this fact proved beyond a shadow of doubt the connection of these two young men with the head-quarters of the conspiracy in Calcutta.

As regards the letters found in a canvas bag at Sylhet, the Advocate-General said that they all breathed a spirit of conspiracy, sedition and disaffection against the constituted Government of the land. There was not even a scintilla of reference to the alleged manufacture of matches in which he was engaged. Almost all the letters that the appellant had received from various quarters, extolled him as a hero and a martyr to the cause of the motherland and he had treasured them all in spite of the expressed desire of the writers to destroy them, simply to show that he approved of their contents and wanted to preserve them as a sort of certificate.

The Advocate-General next explained the cryptogram letter and referred to certain articles in the *Jugantar* to show that these youths imbibed the idea of revolution against the constituted authority in the land. He next read certain articles in the *Sandhya* headed "Kali Mayi's Bombs" and had not concluded his arguments when the Court rose for the day.

THIRTEENTH DAY'S PROCEEDINGS.

His Lordship resumed the further hearing of the reference in the Alipore Bomb Case.

The Advocate-General had finished his argument as regards the first four accused, Sailen, Krishnajibon, Susil and Biren, and he continued his argument in the case against Indra Nath Nundi. The incriminating circumstances against this accused was his connection with the "Chhattra Bhandar." with the "*Jugantar*" newspaper and his relations with Taranath Roy Chowdhuri. This Taranath used to live at 4 Raja's Lane and on a search being made arms and ammunition were found in a trunk said to belong to Taranath. During the hearing of the bomb case before the Sessions Judge of Alipore Taranath could not be found. Subsequently he was traced at Benares and was arrested and is being prosecuted before the Magistrate under the Arms Act.

But besides these there was another incriminating evidence against Indra Nath, which in the opinion of the Advocate-General

was sufficient to bring home the guilt against him. That was the black marks all over his body and the injury on his hand. The prosecution alleged that this was due to an explosion of gun-powder in the house of Col. Nundi, the father of the accused. There was another circumstance against him. He was bound down along with another by the Magistrate of Jamalpur during the riots there.

The Advocate-General referred to documentary evidence showing the accused's connection with the Muraripukur garden and other members of the conspiracy. The Advocate-General had not concluded his arguments when the Court rose for the day.

FOURTEENTH DAY'S PROCEEDINGS.

His Lordship resumed the further hearing of the reference in the Alipore Bomb Case. The Advocate-General, continuing his argument against accused Indra Nath Nandi, referred to the correspondence that had passed between this accused and Taranath Roy Chowdhury, and remarked that although the letters were capable of an innocent explanation yet those who know the language of the "*Jugantar*," article could read into them their proper meaning.

The Advocate-General characterised the letters as cryptogram couched in mystic language and understood by those who were privy to the conspiracy. At any rate, they conclusively showed the refractory state of the appellant's mind. The letters referred to work to be done and enjoined silent meditation and self-discipline. The other documentary evidence against this appellant found at the garden, at 15, Gopi-Mohun Dutt's Lane and at 48, Grey Street, conclusively proved his connection with the leaders of the conspiracy—Barin, Abinash, Arobindo and Taranath. Among the garden exhibits were two books on "sports", one bearing the stamp of Col. Nundi, father of the accused, and the other bearing his own signature. There was an account book in the garden in which the name of the accused appeared side by side with those of the principal conspirators. In another book there were certain entries suggesting that certain number of revolvers were made over to Indra Nath by the conspirators. At 15, Gopi Mohan Dutt's Lane, the name of the accused was written at the back of the cover of a book in three different places; at 48, Grey Street, an account showed the receipt of certain sums of money from the accused as price of books received.

Continuing, the Advocate-General submitted that the documentary evidence was conclusive and the oral evidence was confirmatory. The defence, however, characterised the evidence

of Sarat Das as that of a forger, but Mr. Beachcroft, the Sessions Judge, was satisfied from other evidence, apart from those of the watch witnesses, that the appellant was connected with the conspiracy and convicted him.

The Advocate-General dealt with the evidence in connection with the explosion at 37 College Square, the house where the accused lived and finished his address at 4-30 p. m.

FIFTEENTH DAY'S PROCEEDINGS.

DEFENCE REPLY.

Babu Bejoy Krishna Bose, vakil, was called upon to reply on behalf of Krishna Jibon Sanyal and Sailendra Nath Bose. He said :—My Lord, so far as my two clients are concerned, I need not take up your Lordship's time by replying to all the general observations made by the learned Advocate-General except a few which directly concern my clients. But I can not altogether remain silent and let the opportunity pass without strongly protesting against certain observations made by the Counsel as showing the attitude of mind with which he approached the consideration of this case. To-day, my Lord, at 3-20 p.m., while referring to the pictures of Arabindo Ghose, Surendranath Banerjee, Lala Lajpat Rai, Bipin Chandra Pal &c., that were found at Indra Nundy's house, the learned Advocate-General said that "Indra was surrounded by the enemies of British Rule in India". Of all the mischievous utterances that we have heard, it is, my Lord, the most mischievous. What authority had he to say this? Where is the evidence on which he can rely for this sweeping libel? I do not hold any brief for any of these gentlemen; but to characterise Babu Surendra Nath and others as enemies of British Rule, is the greatest libel against these gentlemen. Then again, my Lord, noticing *Sree Durga*, on the top of several letters, the learned Advocate-General ferretted out conspiracy from the uniformity of these words appearing on the letters and then proceeded to characterise *Sree Durga* as the "goddess of violence and blood-shed." *Sree Durga* is the goddess of peace, of beauty and of joy, and I can only ascribe this remark to the learned Counsel's ignorance of this country. Sitting on the Original Side of this Court, my Lord, your Lordship must have come across thousands of account books of Hindu firms beginning on the top with *Sree Durga*. Are the partners of these firms all conspirators? And this was inexcusable, my Lord, when the learned Counsel, making the remark, was assisted by a Bengali gentleman, a vakil of this Court.

Referring to the confession of Krishna Jibon, the learned Counsel said that Krishna Jibon, when brought before the Magistrate, did not say that he disavowed the objects of this hideous conspiracy, and then the learned Advocate-General remarked "neither did his pleader disavow here in Court." My Lord, what is the meaning of these words? I know of no law or order or custom or tradition which requires any pleader or Counsel, who appears for the defence, to come to Court and say "My Lord, I hate this conspiracy, I disavow its objects, allow me to proceed with my defence." We are not here at a meeting of the Legislative Council or addressing from a public platform; but we are here addressing a Court of Justice to vindicate innocence and help justice. We would not have been here unless we were instructed that our clients were innocent and it is their innocence that we are pressing upon the Court. I think, my Lord, it would be highly improper on the part of any pleader or Counsel to say, in a joint trial of many accused persons, that the clients for whom they were appearing were angels and the others on the dock behind are so many blackguards. It is opposed to the best traditions of the Bar and suicidal to the defence.

The learned Advocate-General again made a sweeping remark that any one found in possession of a single copy of the "*Jugantar*" is a conspirator. There must have been thousands in this country who must have read the newspaper and at the same time did not agree at all with its policy. Even the learned Sessions Judge himself says that at page 24 of his judgment. Instead of proceeding to consider what evidence there is of conspiracy, the learned Counsel took up a particular appellant and said he was associated with an admitted conspirator who was convicted and therefore he was a conspirator. That shows how blurred his vision was and how biased he was from before.

And lastly, my Lord, referring to proofs of handwritings, the learned Counsel admitted that there were no proofs but asked your Lordship to look into the papers, found at the searches and taking the paper in hand said "your Lordship would be able to see "coloured lines" which, on inspection, become visible to the eye, till by this process you could read them and use them against the accused persons." This, my Lord, is said to be the elementary rule of the English Law of Evidence. My Lord this elementary and highly illuminating rule I am not aware of; neither do I care to know. Our Law of Evidence is the Statute Law of 1872, sec. 67 of which enjoins a particular method of proof of handwriting without which your Lordship ought not to consider the letter or document as proved and so can't use against any accused person.

Here the Court rose for the day.

SIXTEENTH DAY'S PROCEEDINGS.

The further hearing of the Alipore Bomb Case was resumed to-day, when Babu Nagendra Nath Bannerjee continued his reply in the case of the Sen Brothers of Sylhet. He submitted that when the Advocate-General began his reply he said that he would deal with the cases of the two brothers separately, but unfortunately he used against Susil not only the evidence that specially affected Susil but all the evidence that touched Biren, the other brother. This was prejudicial to the interest of the appellants. He further submitted that the letters and other alleged incriminating documents were found in a house where several persons had access and that the mere fact of their finding would not be of any value against one of them unless there was something in the document itself or in his conduct or statement, which would go especially to connect him with it. There was no evidence adduced by the Crown to prove Susil's connection with any of the conspirators. No less than five hundred letters were found at the search of their house and in not one of them was there any reference to any conspirator or to any place of conspiracy; and regard being had to the fact that the boys were in the habit of treasuring up every bit of correspondence, it was but natural to suppose that if they were connected with the garden conspiracy, some such reference would have been found in that volume of correspondence. The Sessions Judge did not rely upon the evidence of the search witnesses against the two Sen Brothers and therefore, it would be unsafe for the appellate Court to go behind the findings of the Sessions Judge who had the advantage of hearing the witnesses before him. The evidence afforded by the documents was at best corroborative, but it cannot give a conclusive effect to other evidence in the case. The Advocate-General had referred to several letters which applauded Susil as a hero and undoubtedly some of the letters were very objectionable in terms, but Susil could not be held responsible for statements made by others and there was no evidence that he was in any way elated by these letters. On the other hand he was very properly checked by the Superintendent of the School, Babu Satish Chandra Mukerjee, who forbade him to join any meeting held in his honour.

Referring to the observations regarding the National College, the Vakil submitted that he strongly protested against the observations of the Advocate-General that it was high time that the Government should come down upon the Bengal National College. That institution was serving a very useful purpose and it had on its board the most eminent men of the country, such as Sir Gooroodas Banerjee, Dr. Rash Behari Ghose, Mr. A. Chaudhuri and others, and it had been highly spoken of by several European

gentlemen including Government officials. The Advocate-General's remarks were based on an erroneous supposition that Babu Satish Chandra Mukerjee wrote a letter eulogising Susil on the occasion of the assault on the Inspector. Babu Satish Chandra did nothing of the kind, on the contrary he dissuaded Susil from joining a meeting held by the students to award him a medal.

Mr. Chakravarti in beginning his reply said—

Your Lordship has pointed out that it is open to parties to make comments on the evidence on record. But when there is no evidence on the record with reference to a particular matter no comment can be made whether it be in one's personal knowledge or upon instructions. And I should like to deal first with matters which have been referred to by the Crown counsel without a tittle of evidence on the record to justify them.

First of all certain prints or photographs were found at No. 37, Colloge Street, of Messrs. Surendranath Banerjee, Lala Lajpat Rai, Arabinda Ghose and Bipin Chandra Pal. And these gentlemen were described by the learned Advocate-General as enemies of British rule. I am not aware whether these gentlemen ought to have been so described when there was no evidence on the point and specially whether the character of these gentlemen should have been traduced in this way by the Crown counsel in an address on which no action could be taken by these gentlemen. And having made such an observation without any evidence to justify it the Crown counsel went on to implicate my client on the ground of having been in possession of the pictures or prints. Further the evidence shows these pictures or prints were not even in the room of Indranath. I confess I cannot speak with authority as to what the practice or procedure in England in similar matters may be, but I claim some little experience in matters of this kind in this country and here I must say it is quite unusual to travel beyond the records of the case.

Another luminous idea which was placed before the Court by the Crown counsel is in connection with the invocation *Sri Durga*. Some mysterious meaning has been attached to this invocation for the purpose of proving conspiracy because the same invocation appeared in the letters put in. This is entirely based upon absolute ignorance. It never struck anybody before because the gentlemen conducting the case knew that they could not attach any sinister meaning to it. And I appeal to your Lordship's experience in dealing with thousands of vernacular documents with the same invocation. There is no evidence to show that any sinister meaning is to be attached to this invocation and the observations were highly improper.

Another argument addressed is that Indranath was handling a bomb. There is no evidence on record to show that. On

the other hand the evidence is that he could not have done so. Assuming the whole of the evidence on the subject of explosion to be true and that it took place on 6th or 7th May as alleged by the prosecution it only shows that Indranath was injured by an explosion of gunpowder. But what then? How does it show that he was handling a bomb, Major Black's evidence being that gunpowder was not used in the manufacture of the bombs in this case. What justification is there then in the statement that Indranath was handling a bomb?

Another misconception of the evidence is that Taranath's letters were found in the same box with ammunitions, &c. And there is a further misappreciation of the evidence that Indranath is alleged to have co-operated with Barindra in the publication of the *Jugantar*. There is nothing on the record to justify it. The Company mentioned in Ex. 1368 never came into existence and it was a complete misreading and misconception of the evidence. Mr. Chakravarti then went into a discussion of the evidence after which the Court rose for the day.

SEVENTEENTH DAY'S PROCEEDINGS.

His Lordship concluded the hearing of the reference in the Alipore Bomb appeal.

Mr. B. Chakravarti in replying to the observation of the Advocate-General regretted that his learned friend had introduced into his address matters which had no basis in evidence on the record. Especially in a case of gravity and importance like the present one, it was unusual and improper for the Crown counsel to have done so. He should be sorry if it was the practice in England to introduce into an address for the prosecution matters which found no place on the record, but he must say from the little experience that he claimed of the practice and procedure in this country that such a thing fortunately was rare in this country and opposed to the traditions of the Indian Bar. The impropriety and mischievousness of such observations about certain citizens from the vantage ground of immunity afforded to Counsel addressing a Court could only have been matched by the colossal ignorance afforded by the impertinent observation about the invocation of *Sree Durga*. Mr. Chakravarti next pointed out certain other observations of the Advocate-General which were not justified by the records and then went on to discuss the evidence in detail. Counsel concluded by saying that even if all that had been pressed against his client were accepted, they would only make a case of more suspicion as to Indranath having been in unlawful possession of explosives and that was a far cry to his having been implicated in a conspiracy of the kind alleged, and that considering the whole

of the evidence against him and seeing that both the Assessors and the Chief Justice had found him not guilty, he should be acquitted.

This brought the hearing to a close.

His Lordship reserved judgment.

Mr. Justice Harrington delivered judgment in the reference made as regards five accused in the Alipore bomb case. There were five accused about whom there was a difference of opinion between the Chief Justice and Mr. Justice Carnduff who heard the original appeal, the former being in favour of acquittal and the latter for conviction.

His Lordship agreeing with the Chief Justice acquitted Krishna Jiban Sanyal, Susil Kumar Sen and Indra Nath Nundy and agreeing with Mr. Justice Carnduff convicted Birendra Chandra Sen and Sailendra Nath Bose. Birendra was sentenced to 7 years' transportation and Sailendra to 5 years' rigorous imprisonment.

SUMMARY OF THE JUDGMENT.

This case comes up on a reference under section 429 of the Criminal Procedure Code with respect to five appellants—Krishna Jiban Sanyal, Sailendra Nath Bose, Birendra Chandra Sen, Susil Kumar Sen and Indra Nath Nundy. These persons together with fourteen others were convicted by the learned Sessions Judge of Alipore of offences under Chapter VI of the Indian Penal Code.

All the nineteen prisoners appealed, one died pending the appeal. As to thirteen the learned Judges who heard the appeal were agreed: as to the remaining five they differed. The Chief Justice held that the appeal should be allowed in the cases of the five persons whose names I have mentioned, while Mr. Justice Carnduff was of opinion that these persons should be convicted under section 121-A of the Indian Penal Code for conspiring to wage war on the King and to deprive him of the sovereignty of British India.

The question arises before me as to the existence of a conspiracy punishable under section 121-A of the I. P. Code. Both the learned Judges agree with the Sessions Judge on this point. And there is no doubt that the conspiracy was a particularly formidable one. Its objects and the methods of the conspirators appear in the confessions of the prisoners and in the documents which have been produced in this case.

The object of the conspiracy was to deprive the King of the sovereignty of British India by force. To the attainment of this object the minds of the public generally were

to be inflamed against the English. To this end the *Jugantar* newspaper was employed and calumnies and slander against the English were interwoven with appeals to the readers of the paper to unite to destroy the British rule. Young men were prepared for revolution by the teachings of the originators of this conspiracy. Arms and ammunition were collected. Bombs and high explosives were prepared for the purposes of murder.

The teaching bore fruit. On November 5, 1907, an effort was made to blow up the train in which the Lieutenant-Governor of Bengal was travelling and before the 7th of the following month a similar attempt, happily unsuccessful, had been made. On the 11th April, 1908, an attempt was made on the lives of the Mayor of Chandranagore and his wife with a bomb which was thrown into the room where they were sitting together. This machine though powerful enough to have wrecked the room and killed all the persons in it fortunately failed to explode. But on the 20th another bomb outrage was committed which was unfortunately more successful. A bomb said to be intended for Mr. Kingsford was thrown at a carriage containing Mrs. and Miss Kennedy; it exploded with fatal result to the two ladies.

Some time before the murder of these ladies information had reached the authorities which had induced them to set a watch on various persons and places in Calcutta. After the murder a consultation was held by the police officers which resulted in a search being made on 2nd May at 32 Muraripoker—a place which is referred to as the garden—132, Harrison Road, 15, Gopi Mohun Dutt's Lane and other places, and as a result of this search a large amount of arms, bombs, recipes and materials for making high explosives and seditious literature were discovered and a number of persons who were subsequently placed upon their trial were arrested. Amongst those arrested on May 2 was the appellant Sailendra who, together with Abinash was taken into custody at 48, Grey Street. The other four appellants were arrested later, namely, Krishna Jiban Sanjal on May 12 at Malda, Birendra Chandra Sen and Susil Kumar Sen on May 18th at Sylhet and Indra Nath Nundy on June 23 at Calcutta.

Before dealing with the evidence relating to these five individuals separately, it becomes necessary for me to refer to that branch of the conspirators' work which consisted in inflaming the minds of the people and creating a disaffected spirit by the publication of seditious literature, because the Crown rely on the connection of the appellants with the *Jugantar* newspaper and other seditious publications as one of the circumstances pointing to their connection with the conspiracy itself.

The *Jugantar* was started on March 30, 1906 by Barindro Kumar Ghose, Abinash Bhattacharyya and Bhupendra Nath Dutt. It openly aimed at the destruction of British rule in India. To that end there was published on August 26, 1907, an article urging the formation of bands of young men, with the object of directing local thought and effort towards independence. On January 13, 1907, an article appeared headed "The truth about revolution." This urges a revolution by brute force and refers to the building up of public opinion. Then in the issue of February 3, 1907, there is a specific article on the "building up of public opinion" which, together with the collection of brute force, is said, to be necessary for the work of revolution. It points out the various means by which public opinion is to be built up, namely, by newspapers, by national songs and literature, by preaching, by secret meetings and associations. On March 12, 1907, appears an article on the "Collection of Funds" urging the necessity of collecting funds by force, stating that thefts or dacoities committed to that end are not a sin but a work of religious merit. On April 11th, 1908, there is an article headed "Welcome unrest". Unrest, it says, must be created; its historical name is revolt. And on the same day is a paragraph headed "Liberty at Chandaunagore" referring to the refusal of the Mayor to allow a political meeting. On the very day of this publication a bomb was thrown at the Mayor. Besides the particular passages to which I have referred there are constant references to war, bloodshed and death.

But the *Jugantar* was not the only seditious newspaper. The *Sandhya* although it does not seem to have been published by any one of the conspirators was occupied in endeavouring to excite disaffection by the grossest calumnies against the English.

After quoting passages from the "*Sandhya*," the "*Mukti kon Pathe*" and the "*Bartaman Itan Niti*" his Lordship said; To sum up the effects of the writings to which I have referred, a revolution was to be brought about, and to that end disaffection and discontent were to be excited in the minds of heretofore contented and peaceful people. False and malicious slanders were to be circulated to inflame the minds of the people against the English. Money to defray the expenses of the agitation was to be obtained by robbery. Bombs and explosives were to be prepared, the youths of the country were to be trained in warlike exercises and every preparation made to effect the revolution by force of arms.

That being the state of things the questions I have to decide is whether the evidence upon the record justifies a finding that the five appellants or any of them, have been parties to an agreement to overthrow the Government and effect a revolution by force and

violence. And in considering the evidence as to this it is important to bear in mind the distinction which exists between the cases of those whose minds have been poisoned by the pernicious literature to which I have referred, who have been imbued with a hatred towards the British—and those who have gone a step further and have become parties to an agreement to destroy that Government.

The Assessors in the Sessions Court were in favour of acquitting these five appellants, but the learned Judge was of opinion that their guilt was established.

His Lordship then proceeded to deal with the case of each appellant separately, and considered first the case of Krishna Jiban Sanyal who had been convicted by the Sessions Judge under Section 121-A, I. P. Code and sentenced to imprisonment for one year. His Lordship did not think that there was evidence on the record which fairly warranted a conviction. He agreed therefore with the Chief Justice in holding that the conviction of the appellant should be set aside.

The next case considered was that of Sailendra Nath Bose who was convicted by the Sessions Judge under section 121-A, I. P. Code and sentenced to transportation for life. The evidence in his Lordship's opinion justified the Judge in the conclusion to which he came that Sailendra was guilty and further his Lordship's view was strengthened by Sailendra's own conduct. His Lordship agreed therefore with Mr. Justice Carnduff and was of opinion that Sailendra should be convicted under Sec. 121-A. The Sessions Judge had convicted Birendra Chandra Sen under section 121-A, I. P. Code and sentenced him to transportation for life. Susil, the younger, had been convicted under section 121-A, I. P. Code and had been sentenced to transportation for ten years. As regards Birendra, his Lordship agreed in the view expressed by Mr. Justice Carnduff and held that Birendra Chandra Sen should be convicted under Section 121-A and was not prepared to dissent from the sentences that Mr. Justice Carnduff proposed to pass. With regard to Susil, his Lordship agreed with the Chief Justice in thinking that the conviction of Susil Kumar Sen was wrong and that he should be acquitted.

Lastly came the case of Indra Nath Nundy who was convicted by the Sessions Judge under Sections 121, 121-A and 122 I. P. Code and sentenced to transportation for life. On appeal both the learned Judges were of opinion that the convictions under sections 121 and 122 could not stand but while the Chief Justice was in favour of reversing the conviction under Section 121-A and acquitting the prisoner, Mr. Justice Carnduff thought that the conviction under that section should be sustained but the sentence reduced to one of seven

years' transportation. In his Lordship's opinion the circumstances were not sufficient to bring home connection with the conspiracy to Indra Nath Nundy and his Lordship agreed with the Chief Justice in thinking that his appeal should be allowed.

In conclusion his Lordship said :—The result is that I agree with the Chief Justice in allowing the appeals and reversing the conviction in the cases of Krishna Jiban Sanyal, Susil Kumar Sen and Indra Nath Nundy. I agree with Mr. Justice Carnduff that the convictions of Sailendra Nath Bose and Birendra Chandra Sen under section 121-A, I. P. Code should be affirmed and I assent to the sentences which that learned Judge is prepared to pass. I direct, therefore, that Birendra Chandra Sen be transported for seven years and that Sailendra Nath Bose be rigorously imprisoned for a period of five years.

I should like to add one word in commendation of the police who appear to have carried out the task of tracing out this complicated and formidable conspiracy with great skill and industry and in my opinion deserve great credit at the hands of the public for the way in which they have carried out their work.

APPENDIX A.

List of documents admitted in evidence for the prosecution

(Circular order No 6 of 18th November, 1901)

Distinguishing mark or number	DESCRIPTION OF DOCUMENT	By whom filed.	Date of admission	Whether admitted after or without objection	REMARKS	
1	2	3	4	5	6	
Ex. 1 ..	Sanction for prosecution of 33 persons signed by Chief Secretary to Government of Bengal Search List of 32 Muraripooker Road, Manicktolla of May 2nd Ditto of May 6th Ditto of May 7th Ditto of May 8th Ditto of May 9th Search List of 48, Grey Street of May 2nd.	Prosecution	18th May '08	After objection		
Ex. 2 to 2... 1-12		1st P. W. Frizoni	Ditto	..	Without, L. Birley, 18-5 1908	
Ex. 3 ...		Ditto	..	20th May '08	Without.	
Ex. 4 ...		Ditto	..	Ditto	Ditto.	
Ex. 5 ... 1 to 3		Ditto	..	Ditto	Ditto	
Ex. 6 ... 1 to 2		Ditto	..	Ditto	Ditto	
Ex. 7 ... 1 to 3		Ditto	2nd P. W.	Ditto	Ditto	L. Birley, 20 5 1908

Ex. 8 ... 1 to 3.	Search List of 38-4 Raja Naba Kissen Street of May 2nd.	3rd P. W.	21st May '08	Ditto.
Ex. 9 ...	Search List of 38-4 Raja Naba Krishna Street of May 3rd.	Ditto ...	Ditto	Ditto.
Ex. 10 ... 1 to 2.	Search List of 15 Gopi Mohun Dutt's Lane.	4th P. W.	Ditto	Ditto.
Ex. 11 ...	Search Warrant of 15 Gopi Mohun Dutt's Lane.	5th P. W.	...	L. Birley, 21-5-1908.
Ex. 12 ...	Confession of Barindra Kumar Ghose, dated May 4th.	Prosecution	22nd May '08	Without.
Ex. 13 ...	Confession of Ullaskar Datta of May 4th.	Ditto ...	Ditto	Ditto.
Ex. 14 ...	Confession of Indu Bhusan Ray of May 4th.	Ditto ...	Ditto	Ditto.
Ex. 15 ...	Confession of Upendra Nath Bannerjee of May 4th.	Ditto ...	Ditto	Ditto.
Ex. 16 ...	Confession of Bibhuti Bhushan Sarkar of May 4th.	Ditto ...	Ditto	Ditto.
Ex. 17 ...	Confession of Narendra Nath Buxi, dated May 5th.	Ditto ...	Ditto	Ditto.
Ex. 18 ...	Confession of Narendra Nath Goswami of May 5th.	Ditto ...	Ditto	Ditto.
Ex. 19 ...	Confession of Shudhur Kumar Sarkar of May 11th.	Ditto ...	Ditto	Ditto.
Ex. 20 ...	Confession of Rishi Kesh Kanji Lal of May 11th.	Ditto ...	Ditto	Ditto.
Ex. 21 ...	Confession of Birendra Nath Ghose, dated May 15th.	Ditto ...	Ditto	Ditto.
Ex. 22 ...	Confession of Kristo Jiban Sannyal, dated May 16th.	Ditto ...	Ditto	Ditto.
Ex. 23 ...	Government sanction for prosecuting Birendra Chandra Sen and Hem Kumar Sen.	Ditto ...	6th June '08	Ditto.

Distinguishing mark or number.	DESCRIPTION OF DOCUMENT.	By whom filed.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	2	4	5	6
Ex. 24 ...	Plan of 30-31-32 Muraripukur Road.	8th P. W.	6th June '08	Without.	
Ex. 25 ...	Warrant to search 48 Grey Street...	2nd P. W.	Ditto	Ditto.	
Ex. 25 A...	Signature of Aravinda Ghose on Ex. 25.	Ditto ..	Ditto	Ditto.	
Ex. 26 ...	List of articles received by P. W. 9, from Inspector Gupta.	9th P. W.	Ditto	Ditto.	
Ex. 27 ...	Search Warrant ...	10th P. W.	Ditto	Ditto.	
Ex. 28 ...	Search Warrant ...	10th P. W.	Ditto	Ditto.	
Ex. 29 ... 1 to 3.	Search List of house at which Sushil, Birendra Sen and Hem Chandra were arrested.	Ditto ...	Ditto	Ditto.	
Ex. 30 ...	Plan of 134 Harrison Road and 15, Gopi Mohan Dutt's Lane and adjacent places.	8th P. W.	8th June '08	Ditto.	
Ex. 31 ...	Photo of body taken at Barauni ...	11th P. W.	Ditto	After objection.	
Ex. 32 ...	Ditto ditto ...	Ditto ...	Ditto	Ditto.	
Ex. 33 ... 1 to 7.	Search list of 134, Harrison Road...	12th P. W.	Ditto	Without.	
Ex. 34 ...	Photo of exterior of 134 Harrison Road.	Ditto ...	11th June '08	Ditto.	
Ex. 35 ...	Photo of interior of 134 Harrison Road.	Ditto ...	Ditto	Ditto.	

Ex. 36	...	Photo of bomb which has been destroyed and was found in Ex. 659.	Ditto ...	Ditto	...	Ditto.
Ex. 37	...	Report of the Chemical Examiner on articles found at 15 Gopi M. Dutt's Lane.	15 P. W.	12th June '08	...	Ditto.
Ex. 38	...	Report on articles found at 38-4 Raja Navo Kissen Street.	Ditto ...	Ditto	...	Ditto.
Ex. 39	...	Report of Chemical Examiner, dated May 20 Harrison Road No. 134.	Ditto ...	Ditto	...	Ditto.
Ex. 40	...	Report of the Chemical Examiner on articles found at 134, Harrison Road.	Ditto ...	Ditto	...	Ditto.
Ex. 41	...	Report of Chemical Examiner on articles found at 134, Harrison Road.	Ditto ...	Ditto	...	Ditto.
Ex. 42	...	Report of Chemical Examiner on Chundernagore bomb.	Ditto ...	Ditto	...	Ditto.
Ex. 43	...	Report of Chemical Examiner on articles found at 32, Muraripukur Road.	Ditto ...	Ditto	...	Ditto.
Ex. 44	...	Report of Chemical Examiner on bomb found in a Church.	Ditto ...	Ditto	...	Ditto.
Ex. 45	...	Report of Chemical Examiner on Grey Street bomb.	Ditto ...	Ditto	...	Ditto.
Ex. 46	...	Report of Chemical Examiner on articles found in Sylhet district.	Ditto ...	Ditto	...	Ditto.
Ex. 47	...	Search List of house of Bipin Behary Nag.	27th P. W.	15th June '08	...	Ditto
Ex. 48	...	Search List of house of Tara Nath Rai Choudhury.	28th P. W.	Ditto	...	Ditto
Ex. 49	...	Search List of Moti Lal Bose's house.	Ditto ...	Ditto	...	Ditto

Distin- guishing mark or number.	DESCRIPTION OF DOCUMENT.	By whom filed.	Date of admission	Whether admit- ted after or without objection.	REMARKS
1	2	3	4	5	6
Ex. 50 ... Ex. 51 ... Ex. 52 ... Ex. 53 ... Ex. 54 ... Ex. 55 ... Ex. 56 ... 1 to 10. Ex. 57 ...	Photograph ... Ditto ... Ditto ... Ditto ... Ditto ... Ditto ... Record of Mutation case ... Entry in Register of holdings per- manently settled in Dihl Pan- chanogram.	30th P. W. Ditto ... Ditto ... Ditto ... Ditto ... Ditto ... 31st P. W. Ditto ...	16th June '08 Ditto ... Ditto ... Ditto ... Ditto ... Ditto ... Ditto ... Ditto ...	Without. Ditto ... Ditto ... Ditto ... Ditto ... Ditto ... Ditto ... Ditto ...	Photos, taken at 32, Murari- pookar Road, Maniktola.
Ex. 58 ... 1 to 2. Ex. 59 ...	Pages of Register II of Panchano- gram. Chalan for payment of rent of hold- ing 117 Uftadingi.	33rd P. W. Ditto ...	Ditto ... Ditto ...	Ditto. Ditto.	
Ex. 60 ... Ex. 61 ...	Search List of 30-2 Harrison Road Search Warrant for 3-2 Harrison Road.	30th P. W. Ditto ...	16th June '08 Ditto ...	Ditto. Ditto.	
Ex. 62 ... Ex. 63 ... Ex. 64 ... 1 to 2 Ex. 65 ...	Search List of Boral's Kothi ... Search List of Seal's Lodge, Raidi. Search List of house of accused Narendra Gossain. Search List of house of accused Hrishi Kesh Kanjilal	43rd P. W. 44th P. W. 45th P. W. Ditto ...	Ditto ... 17th June '08 Ditto ... Ditto ...	Ditto. Ditto. Ditto. Ditto.	

Ex. 66	...	Search List of 15, Gopi Mohan Dutt's Lane of June 7th.	62nd P. W.	22nd June '08	Ditto.
Ex. 67	...	Search List of house of Prosanna Kumar Sirkar.	67th P. W.	Ditto	Ditto.
Ex. 68	...	Search List of 80, College Street	80th P. W.	29th June '08	Ditto.
Ex. 69	...	Record of case against Khudi Ram Bose.	82nd P. W.	Ditto	Ditto.
Ex. 70	...	Search List of houses of Purna Charan Sen dated 2nd June 1908	Ditto	3rd July '08	Ditto.
Ex. 71	...	Search List of house of Kristojiban Sanyal.	91st P. W.	6th "	Ditto.
Ex. 72	...	Search list of house of Jadunath Hari.	127th P. W.	10th July '08	Ditto.
Ex. 73	...	Photograph of Khudiram Bose	Prosecution, see. 151st P. W.	14th July '08	Ditto.
Ex. 74	...	Search list of house of Birendra Nath Ghose.	163rd P. W.	15th July '08	Ditto.
Ex. 75	...	Copy of search list of house of Kunja Lal Shaha.	168th P. W.	17th July '08	Ditto
Ex. 76	...	<i>Gazette of India</i> of September 21st, 1907	Prosecution	20th July '08	Ditto.
Ex. 77	...	File of the <i>Bande Mataram</i> Printers and Publishers, Ld. four papers.	By Satish Ch. Dutta, a clerk in the office of Regis- trar of Joint Stock Cos.	Ditto	Ditto.
Ex. 77 a & b	...	Signature in above	Ditto	Ditto	Ditto.
Ex. 78	...	Five papers of the Chhatra Bhandar Ld.	Ditto	Ditto	Ditto.

Distin- guishing mark or number	DESCRIPTION OF DOCUMENTS	By whom filed	Date of admission	Whether admitted after, or without ob- jection	REMARKS
1	2	3	4	5	6
Ex 78(a)	Signature in above	By Satish Ch Dutta, a clerk in the office of Registrar of Joint Stock Cos	20th July '08	Without	
Ex 78(b)...	Signature of Indra Nundi	Ditto ...	4th Sept '08	Ditto	
Ex. 78(c)...	Signature of Pabitra Dutta in Chhatra Bhandar paper	Ditto ...	Ditto .	Ditto	
Ex. 79 ...	Search of May 3rd, of the house of Satyendra Nath Bose.	187th P W	22nd July '08	Ditto	
Ex. 80 ...	Report on Arabinda Ghose's speech of January 15th, 1908	191 P W	10th Aug '08	Ditto	
Ex. 81 ...	Book containing Arabinda Ghose's speech in Marhatti	Ditto	Ditto	Admitted sub- ject to being proved sub	
Ex. 82 ...	Notes of speech of Arabinda	192 P W	Ditto	seemingly Without	
Ex. 83 ...	True copy of report of above	Ditto ...	Ditto	Ditto.	
Ex. 84 ...	Notes of speech of Arabinda	195 P W	Ditto	Ditto	
Ex. 85 ...	Report of the above . . .	Ditto	Ditto	Ditto	
Ex 86	Report on Arabinda Ghose's speech of 25th January 1908	196 P W	..	Ditto	

Ex. 87 1 to 4	Report on Arabinda Ghose's speech for four days.	197 P. W.	Ditto	...	Ditto.
Ex. 88	Notes at the meeting of Uttara- para on April 5th, 1908.	46 P. W.	Ditto	...	Ditto.
Ex. 89	A printed notice	201 P. W.	11th Aug. '08	...	Ditto.
Ex. 90	Report on the speeches of the meet- ing held on 8th April 1908 at Chetla.	201 P. W.	11th Aug. '08	...	Ditto.
Ex. 91	Notes on the speech of the meeting held on April 3 in Cornwallis Street.	202 P. W.	Ditto	...	Ditto.
Ex. 92	Panchannagram survey map	203 P. W.	Ditto	...	Ditto.
Ex. 93	A Report	210 P. W.	Ditto	...	Ditto.
Ex. 94	Copy of report	Ditto	Ditto	...	Ditto.
Ex. 95	Calcutta plans	Ditto	Ditto	...	Ditto.
Ex. 96	Paper giving the distances of the places in the above plan.	211 P. W.	Ditto	...	Ditto.
Ex. 97	A copy of Ex. LXXIX	213 P. W.	12th Aug. '08	...	Ditto.
Ex. 98	Search Lists	215 P. W.	Ditto	...	Ditto.
Ex. 99	Search List	Ditto	Ditto	...	Ditto.
Ex. 100	Ditto	216 P. W.	Ditto	...	Ditto.
Ex. 101	Ditto	Ditto	Ditto	...	Ditto.
Ex. 102	Report of a meeting	9 P. W.	Ditto	...	Ditto.
Ex. 103	Report of the Beadon Square meet- ing.	218 P. W.	Ditto	...	Ditto.
Ex. 104	Search List of 4, Raja's Lane <i>Emperor vs. Debadrata and others,</i> <i>2nd Batch.</i>	172 P. W.	13th Aug. '08	...	Ditto
Ex. 105	Report of the meeting held at College Square on September 14th 1907.	5 P. W.	25th Aug. '08	...	Ditto.

Dis- guising mark or number.	DESCRIPTION OF DOCUMENT.	By whom filed.	Date of admission.	Whether admit- ted after or without objection.	REMARKS.
I	2	3	4	5	6
Ex. 106 ... Ex. 107 ... Ex. 108 ... Ex. 109 ... Ex. 110 ... Ex. 111 ... Ex. 112 ... Ex. 113 ... Ex. 114 ... Ex. 115 ... Ex. 116 ... Ex. 117 ...	Report on Medical examination ... Search Lists, Indra Nundi ... 37 College Street. Search List, Debabrata 55-3 Grey Street. Search List, Bejoy ... 10-1, Rani Sankary Lane. Search List of 10-1 Ram Sankar's Lane. Search List of the shop of Surendra Nath Gangooly and another of Chandpur. Search List of the house of Mohen- dra Nath, Dr. of Chandpur. Notes of the meeting held at the College Square on September 14th 1907. Signature of Nikhileswar taken out of Ex. 78. Search List of the house of accused Jotindra Nath Banerji. Memorandum of articles of the New India Co. Search List of 68, Maniktolla Street	5. P. W. ... 7 P. W. 9 P. W. 9 P. W. 16th P. W. 17th P. W. 24th P. W. Ditto ... 31st P. W. 38th P. W. 39th P. W.	25th Aug. '08 ... Ditto ... 31st Aug. '08 Ditto ... 1st Sept. '08 Ditto ... Ditto ... Ditto ... 3rd Sept. '08 Ditto ...	Without. Ditto. Ditto. Ditto. Ditto. Ditto. Ditto. Ditto. Ditto. Ditto. Ditto. Ditto.	

Ex. 118 ...	Search List of the house of Jotundra Nath Banerji.	46th P. W.	Ditto ...	Ditto.
Ex. 119 ...	Search List of Nikhil at Dhanrai ...	Ditto ...	5th Sept, '08	Ditto.
Ex. 120 ...	Mr. Birley's letter ...	Mr. Birley.	3rd May '08	
Ex. 121 ...	Note of Confession of Bibhuti Sirkar	Ditto ...		
Ex. 122 ...	Ditto Narendra Buxi			
Ex. 123 ...	Letter ...			
Ex. 124 ...	Transfer order ...			
Ex. 125 ...	First Information Report ...		17th May, '08	
Ex. 126 ...	Complaints of Insp. P. C. Biswas ...		19th May '08	
Ex. 127 ...	Endorsement on Ex. 127.			
Ex. 127 A				

List of Articles connected with the offence admitted in Evidence.

(Circular Order No. 6 of 18th November 1908.)

Dis- ting- uishing mark or number.	DESCRIPTION OF ARTICLE.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1	Iron tank	18th May 1908	Without.	
2	Wooden mould	Ditto	Ditto.	
3	Shell...	Ditto	Ditto.	
4	Zinc tank	Ditto	Ditto.	
5	Bucket	Ditto	Ditto.	
6	Gunny bag	Ditto	Ditto.	
7 (1)	Packet of cartridges	Ditto	Ditto.	
7 (2)	Ditto	Ditto	Ditto.	
7 (3)	Ditto	Ditto	Ditto.	
8	Tin-box containing 29 cartridges	Ditto	Ditto.	
9 (1)	Rifle ...	Ditto	Ditto.	
9 (2)	Ditto	Ditto	Ditto.	
9 (3)	Ditto	Ditto	Ditto.	
10	Breach-loading gun	Ditto	Ditto.	
11	Muzzle-loading gun	Ditto	Ditto.	

12	Bellows	...	...	...	Ditto.
13 (1)	Earthen pot	...	...	...	Ditto.
13 (2)	Ditto	...	...	...	Ditto.
14	Cloth with 14 cartridges	...	...	...	Ditto.
15	Revolver	...	...	...	Ditto.
16	Bundle of cotton...	...	...	...	Ditto.
17	Newspaper	...	...	...	Ditto.
18	Revolver No. 33598	...	...	...	Ditto.
19	Ditto No. 2919	...	...	...	Ditto.
20	Ditto No. 320	...	...	...	Ditto.
21	Ditto	...	...	...	Ditto.
22	Ditto	...	...	...	Ditto.
23	Ditto	...	...	...	Ditto.
24	Ditto	...	...	...	Ditto.
25	Ditto No. 42519	...	...	...	Ditto.
26	Spear head	...	...	...	Ditto.
27	Flasks of gunpowder containing $\frac{1}{2}$ ct. earth	...	...	...	Ditto.
1 to 10	Three packets of Martini Henry cartridges	...	...	...	Ditto.
28	Wooden mould box	...	...	...	Ditto.
1 to 3	Half wooden mould	...	...	...	Ditto.
29	Wooden ball	...	...	...	Ditto.
30	13 Boxes of cartridges for rifles and revolvers	...	...	...	Ditto.
31	Two bundles of cartridges tied in cloth	...	...	...	Ditto.
32	Hand-book on modern explosives	...	...	...	Ditto.
1 to 13	Book on nitro explosives	...	...	...	Ditto.
33	Five note-books	...	...	...	Ditto.
1 to 2	Small note-book...	...	...	...	Ditto.
34	Notes treating of explosives	...	...	...	Ditto.
35		...	...	...	Ditto.
36		...	...	...	Ditto.
37		...	...	...	Ditto.
38		...	...	...	Ditto.

N. B.—Articles 1 to 232 were found at 32 Muraripukur Road at the search, dated May 2.

Distinguishing mark or number.	DESCRIPTION OF ARTICLE.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
39	A paper	18th May 1908	Without.	
40	Plans	Ditto	Ditto.	
41 to 45	Zinc tank	19th May 1908	Ditto.	
42	Large bellows	Ditto	Ditto.	
43	Packets containing 7 empty 12 bore cartridge cases	Ditto	Ditto.	
44	Trowel	Ditto	Ditto.	
45	Screw wrench	Ditto	Ditto.	
46	Pair of dumb-bells	Ditto	Ditto.	
47	Iron punch	Ditto	Ditto.	
48	Large piece of chalk	Ditto	Ditto.	
49	Empty medicine bottle	Ditto	Ditto.	
50	Handkerchief containing 5 annas and a-half pice	19th May 1908	Ditto.	
51	Tin mug	Ditto	Ditto.	
52	Long brass-tube	Ditto	Ditto.	
53	Lump of tar	Ditto	Ditto.	
54	Piece of twine	Ditto	Ditto.	
55	Coat claimed by Indra Bhusan	Ditto	Ditto.	
56	Pocket book	Ditto	Ditto.	
56 (a)	Money-order receipt taken out from 56	Ditto	Ditto	
57	Papers contained in pocket book LVI	Ditto	Ditto	Ditto
58				

59 1 and 2	2 Enamel jugs ...	...	...	...	Ditto.
60	Railway lantern ...	...	...	...	Ditto.
61	5 Brass utensils ...	...	...	...	Ditto.
1 to 5	Large Brass handi	...	...	...	Ditto.
62	2 Bell-metal thalis	...	...	...	Ditto.
63	1 Bell-metal bowl	...	...	...	Ditto.
1 and 2	6 Earthen pots ...	...	...	...	Ditto.
64	1 Enamelled tumbler	...	...	...	Ditto.
65	1 Nickel cup ...	...	...	...	Ditto.
1 to 6	Bucket ...	...	...	...	Ditto.
66	Iron spoon and scoop	...	...	...	Ditto.
67	Coat ...	...	...	...	Ditto.
68	3 Post cards contained in coat LXX	...	...	...	Ditto.
69	Printed matter ...	...	...	...	Ditto.
70	Envelope containing LXXII	...	...	...	Ditto.
71	2 Rupees ...	...	...	...	Ditto.
1 to 3	Manuscript notes on Russo-Japanese War	...	...	...	Ditto.
72	A Book	...	...	...	Ditto.
73	Paper	...	...	...	Ditto.
74	Paper	...	...	...	Ditto.
75	Paper	...	...	...	Ditto.
76	Letter addressed to Poresh Chandra Maulick	...	...	...	Ditto.
77	Envelope containing LXXX	...	...	...	Ditto.
78	Letter addressed to Sishir Kumar Ghose	...	...	...	Ditto.
79	Envelope containing LXXXII	...	...	...	Ditto.
80	5 Books with Bengali manuscript contents	...	...	...	Ditto.
81	Book with English manuscript contents	...	...	...	Ditto.
82		...	...	...	Ditto.
83		...	...	...	Ditto.
84		...	...	...	Ditto.
1 to 5		...	...	...	Ditto.
85		...	...	...	Ditto.

104	Bag containing brown paper	...	Ditto.	Ditto.
105	Striped shirt	...	Ditto.	Ditto.
106	Post Card found in CV	...	Ditto.	Ditto.
107	Basket containing clothes	...	Ditto.	Ditto.
108	<i>Empire</i> of May 1st	...	Ditto.	Ditto.
109	" of August 6th	...	Ditto.	Ditto.
110	Tin Box ...	...	Ditto.	Ditto.
111	Book found in CX	...	Ditto.	Ditto.
112	Paper found in CXI	...	Ditto.	Ditto.
113	Letter found in CXI	...	Ditto.	Ditto.
114	Envelope of CXIII	...	Ditto.	Ditto.
115	Paper found in CXI	...	Ditto.	Ditto.
116				
117				
118	Earthen vessel containing incense	...	Ditto.	Ditto.
119	Bengal-Nagpur Railway Guide of 1906	...	Ditto.	Ditto.
120	Tin Box ...	...	Ditto.	Ditto.
121	Pocket book found in CXX	...	Ditto.	Ditto.
122	Imperial Library card bearing name Nalini Kanto Gupta, contained in CXXI.	...	Ditto.	Ditto.
123	Paper contained in CXXI	...	Ditto.	Ditto.
124	Books (12 in number) containing the name of Krishna Jibun Sanyal.	...	Ditto.	Ditto.
1 to 12	Post Card addressed to Krishna Jiban Sanyal	...	Ditto.	Ditto.
125	Manuscript notes on general principles of war	...	Ditto.	Ditto.
126	"Bande Mataram" Badge	...	Ditto.	Ditto.
127	A small tin box	...	Ditto.	Ditto.
128	Certified copy of an entry in a Register of Births	...	Ditto.	Ditto.
129	2 Rent receipts for holding No. 117, Ultadanga	...	Ditto.	Ditto.
130	4 Municipal tax receipts for 32 Moraripukur Road in name of K. D. Ghose.	...	Ditto.	Ditto.
131	450 bullet cartridges found in CXXVIII	...	Ditto.	Ditto.
1 to 2				
1 to 4				
132				

Distinguishing mark or number.	DESCRIPTION OF ARTICLE.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
133	One cardboard box with various contents	19th May 1908	Without.	
134	Sand tied in a towel	Ditto	Ditto.	
135	Striped coat	Ditto	Ditto.	
136	Knife found in CXXXV	Ditto	Ditto.	
137	Railway Key found in CXXXV	Ditto	Ditto.	
138	Cash 2 annas 6 pice	Ditto	Ditto.	
139	Large tin Trunks	Ditto	Ditto.	
140	Cash Rs. 215 (Two hundred and fifteen only) found in CXXXIX.	Ditto	Ditto.	
141	Bundle of links, studs and coins in a paper bearing the names Nalini Kanta Sarkar and Prafulla Chandra Chaki.	Ditto	Ditto.	
142	Iron crow-bar	Ditto	Ditto.	
143	Tin-box	Ditto	Ditto.	
144	394* copies of Bengali books on the modern art of war.	Ditto	Ditto.	
145	Map of Khulna district, in Bengali	20th May 1908	Ditto	
146	Map of Bengal, Behar and Orissa	Ditto	Ditto.	
147	Plan of the City of Calcutta	Ditto	Ditto.	
148	Picture of Astabuja Debi	Ditto	Ditto.	
149	Picture of Goddess Kali	Ditto	Ditto.	
150	Letter addressed to Suku Dada from Muzaffarpur	Ditto	Ditto.	
151	Letter written by Chaki	Ditto	Ditto.	
152	Envelope of C.L.I. addressed to Sisir Kumar Ghose	Ditto	Ditto	

153	Post Card addressed to Pores Chandra Maulik at 44-3, Harrison Road.	Ditto	...	Ditto.
154	Post Card addressed to Pores Chandra Maulik ...	Ditto	...	Ditto.
155	Post Card addressed to Pores Chandra Maulik ...	Ditto	...	Ditto.
156	Letter signed by Guru Prosad and written to B. B. Mitra from Kushia referring to the attack on Mr. Higginbotham.	Ditto	...	Ditto.
157	Envelope of CLVI ...	Ditto	...	Ditto.
158	Another letter in the same envelope on the subject of hiding from the police.	Ditto	...	Ditto.
159	Hotel card ...	Ditto	...	Ditto.
160	Post Card ...	Ditto	...	Ditto.
161	Envelope ...	Ditto	...	Ditto.
162	Letter ...	Ditto	...	Ditto.
163	Envelope ...	Ditto	...	Ditto.
164	Letter found in CLXIII ...	Ditto	...	Ditto.
165	Eight copies of a monthly Bengali magazine called "Bangadarsan" bearing the name of accused Nalini Kanta Sarkar and one copy of a Bengali magazine "Swadeshi Andolon" also bearing his name.	Ditto	...	Ditto.
166	Two copies of a magazine called "Dawn" bearing the name Profulla Chandra Chakrabutty.	Ditto	...	Ditto.
167	Collection of paper and books ...	Ditto	...	Ditto.
161	Note book of Sachindra K. Sen ...	Ditto	...	Ditto.
169	Book called "Mahamudgar" with the name Narendra Nath Buxi.	Ditto	...	Ditto.
170	A book of songs belonging to Sachindra Sen ...	Ditto	...	Ditto.
171	Bradshaw of August 1907 ...	Ditto	...	Ditto.
172	A box of Quackenbush cartridges ...	Ditto	...	Ditto.
173	Wooden box containing books ...	Ditto	...	Ditto.

* L. Birley, 19th May 1908. Exhibits CLXIV to CLXXI were contained in Exhibit CXLIII.

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
174	Manuscript note-book containing Bengali and English notes.	20th May 1908	Without.	
175	Book with Birendra Nath Ghose written in it	Ditto	Ditto.	
176	Letter addressed to Paresh Chandra Maulik	Ditto	Ditto.	
177	Envelope of CLXXXVI	Ditto	Ditto.	
178	Book "Vedantasar" belonging to Nalini Kanto Sarkar.	Ditto	Ditto.	
179	Burke's reflections on French Revolution with the names N. Ghose and S. C. Ghose and inside Satish Chunder Ghose.	Ditto	Ditto.	
180	A Pamphlet "The Russians on the Frontier of India" with the name Soshi Bhusan Ganguly.	Ditto	Ditto.	
181	Book "Bhagabat Gita"	Ditto	Ditto.	
182	Post card found in CLXXXI addressed to Upendra Nath Banerjee at 24 Scott's Lane from Bombay, dated April 22nd 1908.	Ditto	Ditto.	
183	Post card addressed to Bibhuti Bhusan Sarkar, dated August 10th 1907 also found in CLXXXI.	Ditto	Ditto.	
184	Railway Guide with writing in it	Ditto	Ditto.	
185	Mail "On Liberty" belonging to Nalini Kanto Sarkar.	Ditto	Ditto.	
186	The Works of Hem Chandra, bearing name of Krishna Iiban Sanval of Malda.	Ditto	Ditto.	

187	English Dictionary with name of Nolini Kanto Sarkar.	Ditto	..	Ditto.
188	"Company Drill"	Ditto	..	Ditto.
189	"Battalion Drill"	Ditto	..	Ditto.
190	"Desh Katha" with the name of Nolini Kanto Sarkar.	Ditto	..	Ditto.
191	Steps to Muktearship Examination with the name of Hemendra Nath Ghose.	Ditto	..	Ditto.
192	"Annals and Antiquities of Rajasthan" with name of Profulla Chandra Chakervetee and some verses on the back.	Ditto	..	Ditto.
193	Last days of Pompeii belonging to Hemendro Nath Ghose.	Ditto	..	Ditto.
194	Field Exercises ...	Ditto	..	Ditto.
195	Manuscript notes with B. Ghose, Dibrughar, Assam, on the outside.	Ditto	..	Ditto.
196	Book belonging to Hemendro Nath Ghose	Ditto	..	Ditto.
197	Book with Norendra Nath Buxi, National School Girdih, 1907, written inside.	Ditto	..	Ditto.
198	Post card to Indra Bhusan Roy	Ditto	..	Ditto.
199	Bengali Dictionary with name Krishna Jiban Sanyal	Ditto	..	Ditto.
200	The unrest in India	Ditto	..	Ditto.
201	Bazar account with names in it called "No. 2 from March."	Ditto	..	Ditto.
202	Bengali songs ...	Ditto	..	Ditto.
203	Book headed "Pande Mataram"	Ditto	..	Ditto.
204	Post-Card, dated April 9th, 1908, Nalinikanta Gupta, from his mother.	Ditto	..	Ditto.
205	"The Attack Drill made easy"	Ditto	..	Ditto.
206	A pocket-book containing various formulæ for explosives.	Ditto	..	Ditto.
207	35 Other books and pamphlets contained in the box Ex. CLXXIII.	Ditto	..	Ditto

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission	Whether admitted after or without objection.	REMARKS
1	2	3	4	5
208	Photograph of group of Bengalis	20th May 1908	Without.	
209	A wooden-box containing complete set of instruments for making screws.	Ditto	Ditto.	
210	Leather revolver case	Ditto	Ditto.	
211	Bedding in which 210 was found	Ditto	Ditto.	
212	Pair of augers	Ditto	Ditto.	
213	Bundle containing 10 sheets of tin, 2 of zinc and 2 of copper.	Ditto	Ditto.	
214	5 Wooden moulds	Ditto	Ditto.	
1 to 5	2 pieces of iron pipe	Ditto	Ditto.	
215				
1 to 2				
216	File	Ditto	Ditto.	
217	Chisel	Ditto	Ditto.	
218	Hammer	Ditto	Ditto.	
219	Scoop	Ditto	Ditto.	
220	Awl	Ditto	Ditto.	
221	Bag containing clothes and a blank book	Ditto	Ditto.	
222	Tin box of clothes	Ditto	Ditto.	
223	A tin-box	Ditto	Ditto.	
224	Ramrod	Ditto	Ditto.	
225	8 False beards and 2 wigs	Ditto	Ditto.	
1 to 10	Screw wrench	Ditto	Ditto	
226				

227 1 to 11	11 Long narrow canvas bags	...	...	Ditto	...	Ditto.
228	Cotton wool	...	...	Ditto	...	Ditto.
229	2 Pieces of wire-netting	...	...	Ditto	...	Ditto.
1 and 2						
230	A revolver cartridge	...	...	Ditto	...	Ditto.
231	Box containing 185 books	...	...	Ditto	...	Ditto.
1 to 4	Money order receipts	...	...	Ditto	...	Ditto.
232	One of these books on Rangpur District Gazetteer.	...	...	Ditto	...	Ditto
233	A paper bag	...	...	Ditto	...	Ditto.
234	Pistol	...	...	Ditto	...	Ditto.
235	Piece of constable's pagri	...	...	Ditto	...	Ditto.
236	Iron rod	...	...	Ditto	...	Ditto.
237	Torn paper	...	...	Ditto	...	Ditto
238	Packet containing other papers	...	...	Ditto	...	Ditto.
239	A plan with some hieroglyphics	...	...	Ditto	...	Ditto.
240	A plan of Dum-Dum and surroundings	...	...	Ditto	...	Ditto.
241	Note book	...	...	Ditto	...	Ditto.
242	Paper found in 241	...	...	Ditto	...	Ditto
243	Note-book	...	...	Ditto	...	Ditto.
244	Paper found in 243	...	...	Ditto	...	Ditto.
245	Collection of 25 pictures	...	...	Ditto	...	Ditto.
246	Map of Murshidabad District	...	...	Ditto	...	Ditto.
247	" Jessore	...	...	Ditto	...	Ditto.
248	" Burdwan	...	...	Ditto	...	Ditto.
249	" Birbhum	...	...	Ditto	...	Ditto.
250	" Nadia	...	...	Ditto	...	Ditto.
251	" Howrah District	...	...	Ditto	...	Ditto.
252	" Hooghly District	...	...	Ditto	...	Ditto.
253	" Backergunge District	...	...	Ditto	...	Ditto.
254	Two sheets of plan of Central India and Rajputana.	...	...	Ditto	...	Ditto.
1 and 2						

233—236 found at 32
Muraripukur Road on
May 6th.

237—275 found at 32
Muraripukur Road on
May 7th.

Distin- guishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after, or without objection.	REMARKS.
1	2	4	4	6
255	Shirt	20th May 1908	Without.	
256	Bengali notice of meeting to be held on April 4th 1908 at Chanderagore (found in 255)	Ditto	Ditto.	
257	10 Saffron coloured cloths worn by Sadhus	Ditto	Ditto.	
258	Chamois Leather	Ditto	Ditto.	
259	Post card advertisement of Conference addressed to Profulla Chandra Chakraverty.	Ditto	Ditto.	
260	Pocket book with Bengali paragraph signed by Bejoy Kumar Nag.	Ditto	Ditto.	
261	Application for withdrawal of 100 from Savings Bank Agent to withdraw is Hemendro Nath Ghosh.	Ditto	Ditto.	
262	Pencil plan of Kalna.	Ditto	Ditto.	
263	Bundle of manuscript Bengali Note-books.	Ditto	Ditto.	
264	Rivet heads	Ditto	Ditto.	
265	Tin of Bullet and buckshot	Ditto	Ditto.	
266	Spike	Ditto	Ditto.	
267	2 small lanterns	Ditto	Ditto.	
1 and 2	1 loaded and one empty 220 bore cartridge	Ditto	Ditto.	
268	4 Detonators	Ditto	Ditto.	
269	3 spikes and a small chisel	Ditto	Ditto.	
270	Torn plan	Ditto	Ditto.	
271		Ditto	Ditto.	

272	Letter	...	...	...	...	Ditto	...	Ditto.
273	Envelope of 272 addressed to 30-3 Harrison Road.	...	...	...	...	Ditto	...	Ditto.
274	2 Envelopes containing papers	...	...	...	...	Ditto	...	Ditto.
275	2 Bullets	...	...	...	...	Ditto	...	Ditto.
276	Gunny bag marked P. Chaki, Baidyanath, E. I. R.	...	...	...	...	Ditto	...	Ditto
277	Manuscript Note-book.	...	...	...	...	Ditto	...	Ditto.
278	Map of Dacca District.	...	...	...	...	Ditto	...	Ditto.
279	Powder flask containing liquid	...	...	...	...	Ditto	...	Ditto.
280	2 Bullets	...	...	...	...	Ditto	...	Ditto.
281	A collection of papers and books	...	...	...	...	Ditto	...	Ditto.
282	Scraps of papers found at 32 Muraripukur Road on May 9th.	...	...	...	...	Ditto	...	Ditto.
283	14 Slips of paper with manuscript writing	...	...	...	...	Ditto	...	Ditto.
284	"Bengalee" of May 1908 with three pieces cut out and some underlining in red pencil.	...	...	...	...	Ditto	...	Ditto.
285	2 copies of "Yugantar"	...	...	...	...	Ditto	...	Ditto.
286	15 Documents, one of which is signed by Arabinda Ghose.	...	...	...	...	Ditto	...	Ditto.
1 to 8								
287	9 Documents	...	...	...	...	Ditto	...	Ditto.
288	3 Letters	...	...	...	...	Ditto	...	Ditto.
289	8 Documents	...	...	...	...	Ditto	...	Ditto.
290	2 Documents and a book for subscription for Girdih National School.	...	...	...	...	Ditto	...	Ditto.
290 (a)	One of the two documents	...	...	...	...	Ditto	...	Ditto.
291	138 Post cards	...	...	...	...	Ditto	...	Ditto.
292	130 Letters and envelopes	...	...	...	...	Ditto	...	Ditto.
292 (a)	Letters	...	...	...	...	Ditto	...	Ditto.
1 to 7-2								
293	53 Letters	...	...	...	...	Ditto	...	Ditto.
1 to 3								

* 282 found at 32 Muraripukur Road on May 9th.

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after, or without objection.	REMARKS.
1	2	3	4	5
294	Letter from Arabinda Ghosh, dated December 6th, 1907.	20th May 1908	Without.	
295	Letter, dated December 27th 1907	Ditto	Ditto.	
296	Bundle of 6 Documents and 2 pamphlets	Ditto	Ditto.	
297	Telegram from Tilak	Ditto	Ditto.	
298	Cheque book showing cheque paid to Abinash Chandra Babu on March 24th.	Ditto	Ditto.	
299	Bundle of 11 manuscript books	Ditto	Ditto	
1 to 11	55 Letters	Ditto	Ditto.	
300	4 Manuscripts	Ditto	Ditto.	
1 to 20	19 Letters	Ditto	Ditto.	
301	Book of Newspaper cuttings	Ditto	Ditto.	
1 and 4	Photo of group including Arabindo	Ditto	Ditto.	
302	32 Post cards	Ditto	Ditto.	
303	17 Letters and envelopes	Ditto	Ditto.	
304	6 Documents	Ditto	Ditto.	
305	List of subscribers to "Navasakti" and three other documents.	Ditto	Ditto.	
306	Copy of proceedings in "Yugantar" case	Ditto	Ditto.	
307	Photo of Group including Arabindo	Ditto	Ditto.	
308	Bundle containing 7 documents and note-book	Ditto	Ditto.	
309				
310				
311				

312 and 2	2 Rent receipts from Abinash Chandra Babu	Ditto	...	Ditto
313	3 Manuscripts and a note-pad	Ditto	...	Ditto
314	4 Account books	Ditto	...	Ditto
315	6 Account books and 12 manuscript sheets and 1 rent receipt	Ditto	...	Ditto
316	2 Post Cards and a letter	Ditto	...	Ditto
317	Newspaper and letter ... which arrived during search.	Ditto	...	Ditto
318	Bicycle	Ditto	...	Ditto
319	Label from Kustia on the bicycle	Ditto	...	Ditto
320	A Bengali letter stating that Police are after Hem Chandra Das.	Ditto	21st May 1908	Ditto
321	A Bengali song on a sheet of paper	Ditto	...	Ditto
322	A book on Chemistry by Ram Chandra Dutt	Ditto	...	Ditto
323	Torn pages of a Bengali book	Ditto	...	Ditto
324	Envelope	Ditto	...	Ditto
325	A letter addressed to Hem Chandra Das from Madras in an envelope	Ditto	...	Ditto
326	Envelope of 325	Ditto	...	Ditto
327	A Bengal letter signed by Kali Prosanno addressed to Santu, warning Addressee	Ditto	...	Ditto
328	A letter in English, dated 15th February 1908 addressed to Hem and signed J K Nag and with Monsieur Doss written on the outside.	Ditto	...	Ditto
329	A book "A Bengali in Europe" in manuscript	Ditto	...	Ditto
330	Photos and 2 negatives	Ditto	20th May 1908	Ditto
331	2 drills	Ditto	21st May 1908	Ditto
332	2 Pairs of sissor, and 2 pairs of pincers	Ditto	...	Ditto
333	1 turn screw	Ditto	...	Ditto
334	1 Chisel	Ditto	...	Ditto

330 to 372 found at 38-4
Raja Naba Krisna
Street on May 3rd.

Dis- tinct- mark or number.	DESCRIPTION OF ARTICLE.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
335	A 1-hand vice ...	21st May 1908	Without.	
336	1 Wrench ...	Ditto	Ditto.	
337	A small hammer ...	Ditto	Ditto.	
338	A small file ...	Ditto	Ditto.	
339	A small chisel ...	Ditto	Ditto.	
340	A foot-rule ...	Ditto	Ditto.	
341	A penknife ...	Ditto	Ditto.	
342	2 pieces of melted lead and tin	Ditto	Ditto.	
343	12 Nails ...	Ditto	Ditto.	
344	2 Compasses ...	Ditto	Ditto.	
345	2 Albums of pictures ...	Ditto	Ditto.	
1 and 2	12 catalogues and a lot of printed advertisements ...	Ditto	Ditto.	
346	A box of pistol crayons ...	Ditto	Ditto.	
347	A box of brass scales and weights ...	Ditto	Ditto.	
348	9 negatives of photos ...	Ditto	Ditto.	
349	Pocket guide to Paris ...	Ditto	Ditto.	
350	France its History and Revolution ...	Ditto	Ditto.	
351	A collection of 10 other books and 3 continental maps.	Ditto	Ditto.	
352	A despatch box containing letters and papers including 354.	Ditto	Ditto.	
353	A photograph of a group ...	Ditto	Ditto.	
354		Ditto	Ditto.	

355	A photograph of Arabinda Ghosh	...	Ditto.	Ditto.
356	Photograph of Bhupendra Nath Dutt	...	Ditto	Ditto.
357	5 more photographs	...	Ditto	Ditto.
357 (a)	Photo of G. S. Kheparde	...	Ditto	Ditto.
358	40 letters and cards, one torn letter	...	Ditto	Ditto.
359	A third-class ticket from Colombo to Marseilles bearing the name of Hem Chandra Das	...	Ditto	Ditto
360	A cloth bag containing shot	...	Ditto	Ditto
361	26 percussion caps	...	Ditto	Ditto.
362	An empty gunpowder flask	...	Ditto	Ditto.
363	An empty box of cartridges for revolver	...	Ditto	Ditto
364	Letter from Hem to his wife, dated 11th September 1906.	...	Ditto	Ditto.
365	From Hem's sister in law, dated 22nd October 1906.	...	Ditto	Ditto.
366	From Hem to his wife	...	Ditto	Ditto
367	From Hem to his wife, dated January 5th	...	Ditto	Ditto
368	2 letters from Hem on one paper	...	Ditto	Ditto
369	Box containing 42 letters, 3 written post cards, 2 blank Foreign post cards, 3 pamphlets and 6 addressed envelopes	...	Ditto	Ditto
1 to 33	Box of clothes	...	Ditto	Ditto
370	21 letters, 3 post cards and 8 other papers	...	Ditto	Ditto
371	1 brass covering of a telescope	...	Ditto	Ditto
372	9 books	...	Ditto	Ditto
373	A leather hand bag containing Rs 22 and two Ten-rupee notes	...	Ditto	Ditto
374	A copy of "Sandhya" dated April 28th 1908	...	Ditto	Ditto
375	A copy of Jnanयोग with the name Birendra Nath Ghose on it	...	Ditto	Ditto
376	14 Books	...	Ditto	Ditto
377	A Bengali book on modern warfare	...	Ditto	Ditto
378		...	Ditto	Ditto

373 to 386 found at 15,
Gopi Mohun Dutt's
Lane on May 2nd

Distinguishing mark or number.	DESCRIPTION OF ARTICLE.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
379	A Bengali Dictionary with Bibhuti Bhusan Sirkar's name on it.	21st May 1908	Without.	
380	A diary ...	Ditto	Ditto.	
381	9 Books ...	Ditto	Ditto.	
382	A Book with addresses and notes ...	Ditto	Ditto.	
383	A manuscript note-book with Krishna Jiban Sanyal's name.	Ditto	Ditto.	
384	A piece of paper with formulæ for explosives, also Re. 1-1-6.	Ditto	Ditto.	
385	2 Letters ...	Ditto	Ditto.	
386	Some zinc wire ...	Ditto	Ditto.	
387	6 Balls of sand resin and oil ...	Ditto	Ditto.	
388	A piece of chalk...	6th June 1908.	Ditto.	
389	A tin of varnish...	Ditto	Ditto.	
390	An iron rod with fused mass of copper and tin at the end.	Ditto	Ditto.	
391	An earthen chatty containing pitch ...	Ditto	Ditto.	
392	2 Enamel basins containing earth, oil, and resin ...	Ditto	Ditto.	
393	Plate containing salt ...	Ditto	Ditto.	
394	Bottle of castor-oil ...	Ditto	Ditto.	
395	Sedlitz powders ...	Ditto	Ditto.	
396	Medicine	Ditto	Ditto.	

387 to 452 found at 32, Muraripukur Road.

397	Bundle containing fragments of copper zinc and tin, etc.	Ditto	...	Ditto.
398	Earthen bowl containing coarse flour ...	Ditto	...	Ditto.
399	Sand ...	Ditto	...	Ditto.
400	Pestle and mortar containing resin ...	Ditto	...	Ditto.
401	Medicine ...	Ditto	...	Ditto.
402	Earthen tumbler containing catechu resin ...	Ditto	...	Ditto.
403	Paper containing tobacco snuff ...	Ditto	...	Ditto.
404	Medicine ...	Ditto	...	Ditto.
405	Ditto ...	Ditto	...	Ditto.
406	Powdered vegetable substance ...	Ditto	...	Ditto.
407	Earth mixed with oil ...	Ditto	...	Ditto.
408	Powdered chalk...	Ditto	...	Ditto.
409	Some ashes of coke tied up in a rag ...	Ditto	...	Ditto.
410	A packet containing resin ...	Ditto	...	Ditto.
411				
412				
413				
414				
415				
416				
417				
418				
419				
420	Antiseptic dressings, and antiseptic bandages	Ditto	..	Ditto
421				
422				
423				
424				
425				
426				
427				
428				

Distin- guishing mark or number.	DESCRIPTION OF ARTICLE.	3	4	REMARKS.
1	2	3	4	5
429	Portions of a bomb	6th June 1908	Without.	
430	...	...	...
431	Bottles of carbolic acid	Ditto	Ditto.	
432	...	...	...
433	Strong sulphuric acid	Ditto	Ditto.	
434	Medicine	Ditto	Ditto.	
435	...	Ditto	Ditto.	
436	A shell in a glass jar	Ditto	Ditto.	
437	Part of contents of the shell 437	Ditto	Ditto.	
438	Picric acid	Ditto	Ditto.	
439	...	Ditto	Ditto.	
440	A shell similar to Ex. 437	Ditto	Ditto.	
441	Contents of the above shell...	Ditto	Ditto.	
442	Crucible containing fused copper and tin with some borax.	Ditto	Ditto.	
443	A piece of tin	Ditto	Ditto.	
444	Three tin pipings	Ditto	Ditto.	
445	Small tin piping...	Ditto	Ditto.	
446	Medicine	Ditto	Ditto.	
447	Traces of sulphuric acid in a glass jar	Ditto	Ditto.	
448	Traces of sulphuric acid	Ditto	Ditto.	
449	Empty bottles	Ditto	Ditto.	
450	...	...	...

451	Empty bottles ...	...	...	Ditto	...	Ditto.
452						
453						
454						
455						
456						
457						
458						
459	Stone jars of sulphuric acid	...	...	Ditto	...	Ditto.
460	A bottle of perchloride of mercury	...	...	Ditto	...	Ditto.
461	A Bengali book ...	...	...	Ditto	...	Ditto.
462	Ditto ...	...	...	Ditto	...	Ditto.
463	Ditto ...	...	...	Ditto	...	Ditto.
464	"Songs of Bengal"	...	...	Ditto	...	Ditto.
465	Five sets of a four volumed book in Bengali called	...	...	Ditto	...	Ditto
466	"which is the Road of Providence," it is a repro-	...	...	
467	ductor of Yugantar and has "Printed by A C	...	...	
	Bhatta harjee" written on the back	...	...	
	"Character of Allark"	...	...	Ditto	...	Ditto
468	A Bengali book ...	...	...	Ditto	...	Ditto
469	A guide to Poonen	...	...	Ditto	...	Ditto
470	A Bengali book bearing an inscription which shows	...	...	Ditto	...	Ditto
471	that it was given as a prize to Birendra Nath Sen	...	...	
	A manuscript Bengali song.	...	...	Ditto	...	Ditto
472	A letter from Postmaster General of Bengal to	...	...	
473	Birendra Chandra Sen, dated September 5th	...	...	
	1907, addressed to 25, Sitaram Ghose's Street,	...	...	
	Calcutta	...	...	
474	A money order receipt for subscription to the	...	...	Ditto	...	Ditto
	Sandhya	...	...	
475	A Bengali diary of Birendra Chandra Sen for	...	...	Ditto	...	Ditto.
	1908.	...	...	

463 to 571 found in the
house in which accus-
ed Susil Kumar Sen,
Birendra Sen, Hem
Chandra Sen were
arrested

Distinguishing mark or number.	DESCRIPTION OF ARTICLE.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
476	An exercise book which is written by the wife of their brother Sirish.	6th June 1908	Without.	} Found together with 476.
477	A scholar's register	Ditto	Ditto.	
478	A picture of Lajpat Rai	Ditto	Ditto.	
479	A small note book containing hieroglyphics list of explosives and the constituents of a Bomb.	Ditto	Ditto.	
479(a)	An entry in that book	Ditto	Ditto.	
480	A Swadeshi song	Ditto	Ditto.	
481	Receipt bearing name of Birendra Chandra Sen for school fees.	Ditto	Ditto.	
482	Ditto for Susil Kumar Sen	Ditto	Ditto.	
483	An exercise book containing Bengali letters	Ditto	Ditto.	
484	A note-book containing instructions for making safety matches.	Ditto	Ditto.	
485	A book of manuscript songs	Ditto	Ditto.	
486	"Sathyarth Prakash"	Ditto	Ditto.	
487	"The Secret Revealer"	Ditto	Ditto.	
488	A Bengali book	Ditto	Ditto.	
489	A Bengali book of Songs	Ditto	Ditto.	
490	"Self-Defence"	Ditto	Ditto.	
491	A note-book containing hieroglyphics and instructions for making explosives.	Ditto	Ditto.	
492	"Broad sword and single stick", a book	Ditto	Ditto.	
493	Text-book of Jui-Jitsu	Ditto	Ditto	

	Manuscript Note-book.	...	...	6th June 1908	Ditto.
504	A notebook.	...	...	Ditto	Ditto.
505	...	...	...	...	...
506	Drill instructions in Bengali	...	...	Ditto	Ditto.
507	Letters from a Europe going sannyasi...	...	...	Ditto	Ditto.
508	Bengali book	...	...	Ditto	Ditto.
509	English drill book	...	...	Ditto	Ditto.
510	An exercise book	...	...	Ditto	Ditto.
511	A note-book	...	...	Ditto	Ditto.
512	Ditto	...	...	Ditto	Ditto.
513	A letter addressed to Hem Chunder Sen, from Bengal Chemical Pharmaceutical Works, dated May 4th, 1908.	...	...	Ditto	Ditto.
514	A letter dated May 1st, 1908, to Hem Chunder Sen from B. K. Paul & Co, Chemists.	...	...	Ditto	Ditto.
515	A paper with Bengali writing on it	...	...	Ditto	Ditto.
516	A manuscript note-book of Hem Chunder Sen	...	...	Ditto	Ditto.
517	The Swordsman containing	...	...	Ditto	Ditto.
518	A printed letter	...	...	Ditto	Ditto.
519	A book about Japanese Etymology	...	...	Ditto	Ditto.
520	Manuscript book	...	...	Ditto	Ditto.
521	Book of Manuscript maps	...	...	Ditto	Ditto.
522	Ditto	...	...	Ditto	Ditto.
523	Instructions for using dumb bells found in a coat pocket	...	...	Ditto	Ditto.
524	A Bengali Book	...	...	Ditto	Ditto.
525	A list of heroes and martyrs	...	...	Ditto	Ditto.
526	A photograph of Mrs Arabindo Ghose presented to Suprova (who is wife of Sushil's eldest brother)	...	...	Ditto	Ditto.
527	A book of Japan	...	...	Ditto	Ditto.
528	Bengali Hymns	...	...	Ditto	Ditto.
529	A bundle of 110 letters	...	...	Ditto	Ditto.
530		...	...	Ditto	Ditto.

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
521 1 to 522	Five Letters from Jitendra ... A packet containing 5 envelopes addressed to Biren and Sushil at 166, Bowbazar in September and November 1907, 2 envelopes addressed to Sushil Biren, 25, Sitaram Ghose's Street in September 1907, envelope to Biren at Sylhet in 1905 and December 1907, 1 envelope to Biren at 123-1, Kerani Bagan, January 1908. One envelope to Biren at Calcutta from S. C. Dutt, November 28, 1907, a letter for Biren from Girendra Nath, a letter for Biren at 86, College Street, from Sylhet, dated May 10th, 1908; 2 more letters from Jandro Nath referring to Shushil's arrest. A red and a yellow pagri. ...	6th June 1908 Ditto ...	Without. Ditto	
523	These wooden guns with bamboo barrel	Ditto	Ditto.	
524	An Air-gun	Ditto	Ditto.	
525	Another air-gun	Ditto	Ditto.	
526	Four bamboo daggers	Ditto	Ditto.	
527	A bow	Ditto	Ditto.	

532	Two iron-spear heads	...	...	...	Ditto.
533	Two iron-spear heads	...	...	...	Ditto.
534	Two iron-spear heads	...	...	...	Ditto.
535	Two iron-spear heads	...	...	...	Ditto.
536	Two iron-spear heads	...	...	...	Ditto.
537	Two iron-spear heads	...	...	...	Ditto.
538	Two iron-spear heads	...	...	...	Ditto.
539	Two iron-spear heads	...	...	...	Ditto.
540	Two iron-spear heads	...	...	...	Ditto.
541	Two iron-spear heads	...	...	...	Ditto.
542	Two iron-spear heads	...	...	...	Ditto.
543	Two iron-spear heads	...	...	...	Ditto.
544	Two iron-spear heads	...	...	...	Ditto.
545	Two iron-spear heads	...	...	...	Ditto.
546	Two iron-spear heads	...	...	...	Ditto.
547	Two iron-spear heads	...	...	...	Ditto.
548	Two iron-spear heads	...	...	...	Ditto.
549	Two iron-spear heads	...	...	...	Ditto.
550	Two iron-spear heads	...	...	...	Ditto.
551	Two iron-spear heads	...	...	...	Ditto.

... } In South house
 ... }
 ... }

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after, or without objection.	REMARKS.
1	2	4	4	6
552	A portrait ...	6th June 1908	Without.	
553	A picture ...	Ditto	Ditto.	
554	A picture ...	Ditto	Ditto.	
555	A portrait ...	Ditto	Ditto.	
556	Portrait of Surendra Nath Banerjee ...	...	Ditto.	
557	A picture called "Famine"	...	Ditto.	
558	A portrait of Lalpat Rai ...	8th June 1908...	Ditto.	
559	A bundle of 84 drawings claimed by Hem Chandra	...	Ditto.	
560	Map of Bengal ...	Ditto	Ditto.	
561	Railway map of Bengal ...	Ditto	Ditto.	
562	A paper of resolutions of Hem Chunder Sen	Ditto	Ditto.	
563	List of Chemicals ...	Ditto	Ditto.	
564	Paper with figures ...	Ditto	Ditto.	
565	Map of Assam.	Ditto	Ditto.	
566	to more drawings ...	Ditto	Ditto.	
567	A copy of "Sanjibani" newspaper of March 19th, 1908, with red underlying.	Ditto	Ditto.	
568	A bundle of Letters ...	Ditto	Ditto.	
569	to letters ...	Ditto	Ditto.	
570	...	Ditto	Ditto.	
571	Biography of Sushil Kumar Sen ...	Ditto	Ditto.	
572	A canvas bag which contained letters and the powder.	Ditto	Ditto.	

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after, or without objection.	REMARKS
1	2	3	4	5
596	15 copper cuttings	8th June 1908	Without.	
597	Two rolls of tin	Ditto	Ditto.	
598	Four small tin cuttings	Ditto	Ditto.	
599	Two small bits of wire gauze	Ditto	Ditto.	
600	Two copper bomb shells	Ditto	Ditto.	
601	One card board box containing 18 carpenters tools	Ditto	Ditto.	
602	A pink envelop containing 24 loaded cartridges and 4 empty cases	Ditto	Ditto.	
603	Three brass cocks	Ditto	Ditto.	
604	Three brass cock fittings	Ditto	Ditto.	
605	One bit of lead	Ditto	Ditto.	
606	A blow pipe	Ditto	Ditto.	
607	Two retort stands	Ditto	Ditto.	
608	One roll of oil paper	Ditto	Ditto.	
609	One cloth knife sheath	Ditto	Ditto.	
610	An iron screw bomb with 24 spikes in it which were taken out by Major Smallwood at Park Street Thana	Ditto	Ditto.	
611	Some pieces of cloth	Ditto	Ditto.	
612	Small bit of wood	Ditto	Ditto.	
613	Small bit of wire	Ditto	Ditto.	
614	Two bombs with detonating studs	Ditto	Ditto.	
and 2	One copy 'The Road to Freedom in Bengal'	Ditto	Ditto.	
615				

623	Three padlock and key ...	...	Ditto	...	Ditto.
624	Three bottles containing puric Acid	...	Ditto	...	Ditto.
625	Three bottles carbolic Acid	...	Ditto	...	Ditto.
626	Two bottles of Chemical glycerine	...	Ditto	...	Ditto.
627	One bottle caustic soda	...	Ditto	...	Ditto.
628	One bottle caustic potash	...	Ditto	...	Ditto.
629	Two bottles nitrate of potash	...	Ditto	...	Ditto.
630	Six dry cells	...	Ditto	...	Ditto.
631	Two bottles of ammonium chloride	...	Ditto	...	Ditto.
632	One bottle containing chlorate coloured power	...	Ditto	...	Ditto.
633	One bundle of metal rods	...	Ditto	...	Ditto.
634	One reel and 2 balls of twine	...	Ditto	...	Ditto.
635	One wooden rack	...	Ditto	...	Ditto.
636	Two packets of screws	...	Ditto	...	Ditto.
637	One cardboard containing a smaller box contain- ing seven detonators.	...	Ditto	...	Ditto.
638	Two tin boxes full of detonators	...	Ditto	...	Ditto.
639	A paper packet containing white powder	...	Ditto	...	Ditto.
640	Four bottles	...	Ditto	...	Ditto.
641	One packet containing Gum Arabic	...	Ditto	...	Ditto.
642	One packet round white papers	...	Ditto	...	Ditto.
643	Two empty copper bomb cases	...	Ditto	...	Ditto.
644	One packet resin	...	Ditto	...	Ditto.

Distinquishing mark or number.	DESCRIPTION OF ARTICLES.		Date of admission	Whether admitted after or without objection.	REMARKS
	1	2	3	4	5
637	One brass shell bomb	...	8th June 1908	Without.	
638	One wooden frame	...	Ditto	Ditto.	
639	One empty leather revolver case	...	Ditto	Ditto.	
640	A manuscript plan	...	Ditto	Ditto.	
641	Another manuscript plan	...	Ditto	Ditto.	
642	Another manuscript plan	...	Ditto	Ditto.	
643	Another rough plan	...	Ditto	Ditto.	
644	24 sheets of paper, dated "Pondicherry the 12th June 1907."	...	Ditto	Ditto.	
645	One unsigned communication.	...	Ditto	Ditto.	
646	Piece of paper with English writing	...	Ditto	Ditto.	
647	Post-card addressed to Asok Chandra Nandi C/o, G. Dutta, Esq., Engineering College Shibpur, Howrah	...	Ditto	Ditto.	
648	Registered letter receipt stamped. 13th July 1907.	...	Ditto	Ditto.	
649	Letter, dated 3rd July 1907, from the Commissioner of Police to Bhupendra Nath Dutt	...	Ditto	Ditto.	
650	A sheet of paper containing entries regarding fire-arms.	...	Ditto	Ditto.	
651	A letter, dated 12th July 1907, addressed to Commissioner of Police and signed Bhupendra Nath Dutt.	...	Ditto	Ditto.	
652	A sheet of paper containing some vernacular writing.	...	Ditto	Ditto.	

653	A piece of paper containing vernacular writing ...	Ditto	...	Ditto.
654	A sheet of paper containing vernacular writing, stamped yellow.	Ditto	...	Ditto.
655	A paper with vernacular writing ...	Ditto	...	Ditto.
656	Paper containing pencil and ink writing ...	Ditto	...	Ditto.
657	Paper containing pencil and ink writing postal receipt for letter to Commissioner of Police, dated 12th July 1907.	Ditto	...	Ditto.
658	A postal card addressed to Prokash Chumder Bose, dated 4th February 1908.	Ditto	...	Ditto.
659	A canvas bag ...	Ditto	...	Ditto.
660	Bomb cases ...	Ditto	...	Ditto.
661	Bomb cases ...	Ditto	...	Ditto.
662	A partly made bomb ...	Ditto	...	Ditto.
663	An empty tin covered with cloth ...	Ditto	...	Ditto.
664	A flask containing gunpowder partly used ...	Ditto	...	Ditto.
665	Five packets containing different powders ...	Ditto	...	Ditto.
666	Wooden box containing scales and weights ...	Ditto	...	Ditto.
667	A black note book ...	Ditto	...	Ditto.
668	Thirteen slips of white paper and 43 of brown paper containing entries about schools	Ditto	...	Ditto.
669	Seven school books ...	Ditto	...	Ditto.
670	A post-card addressed to Mohendra Babu ...	Ditto	...	Ditto.
671	Ditto Pulat Chandra Nandi	Ditto	...	Ditto.
672	A pair of cloth slippers ...	Ditto	...	Ditto.
673	A stone ...	Ditto	...	Ditto.
674	A thermometer ...	Ditto	...	Ditto.
675	Two testers ...	Ditto	...	Ditto.
676	Small thermometer in case ...	Ditto	...	Ditto.
677	Three measuring glasses ...	Ditto	...	Ditto.
678	One rack containing 11 glass tubes ...	Ditto	...	Ditto.
679	Two large glass funnels ...	Ditto	...	Ditto.
1 & 2				

Dis- guising mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
		3	4	5
1	2			
560 1 & 2	Two small glass funnels ...	8th June 1908	Without.	
561 1 & 2	Two large glass bulbs (retorts) ...	Ditto	Ditto.	
562 1 & 2	Three glass jugs ...	Ditto	Ditto.	
563 1 & 2	Two glass spirit lamps ...	Ditto	Ditto.	
564	A long glass tube containing other glass tubes	Ditto	Ditto.	
565	A small tin-box containing small paper packets	Ditto	Ditto.	
566	Box containing cotton wool...	Ditto	Ditto.	
567	Cardboard box containing 7 detonators	Ditto	Ditto.	
568	A bottle containing congealed fluid ...	Ditto	Ditto.	
569	A box of powders ...	Ditto	Ditto.	
570	One bottle liquid mercury ...	Ditto	Ditto.	
571	Do. of Picric acid ...	Ditto	Ditto.	
572	Do. containing fluid...	Ditto	Ditto.	
573	Do. of carbolic acid...	Ditto	Ditto.	
574	Three packets containing circular papers ...	Ditto	Ditto.	
575	Do. yellow powder ...	Ditto	Ditto.	
576	One small white towel	Ditto	Ditto.	
577	Two post-cards addressed to Prokash Chandra Bose, dated 1st February 1908 and 9th March 1908.	Ditto	Ditto.	

704	Two several letters with English writing at the bottom.	Ditto	...	Ditto.
705	A photo of Biplin Chandra Pal	11th June 1908	...	Ditto.
706	An exercise book with the name Dhorani Nath Gupta and containing notes about chemicals.	Ditto	...	Ditto.
707	A picture of Madanram	Ditto	...	Ditto.
708	Collection of letters	Ditto	...	Ditto.
709	A telegram, dated 25th May 1905, addressed to Nogenendra Gupta.	Ditto	...	Ditto.
710	Thirty post cards	Ditto	...	Ditto.
711	A bundle containing books and pamphlets	Ditto	...	Ditto.
712	A small dagger	Ditto	...	Ditto.
713	A bundle of 11 photos	Ditto	...	Ditto.
714	A bundle of letters	Ditto	...	Ditto.
715	Four files of letters	Ditto	...	Ditto.
716	Spirits of wine methylated with coast choncine	Ditto	...	Ditto.
717	Epsom Salts	Ditto	...	Ditto.
718	Powdered resin	Ditto	...	Ditto.
719	Earth mixed with oil, fragments of coke and fragments of burnt clay	Ditto	...	Ditto.
720	Earthen vessel containing sand, earth, oil, earthenware fragments, chalk, solder, etc	Ditto	...	Ditto.
721	Earth mixed with oil and a fragment of solder	Ditto	...	Ditto.
722	A single-bladed clasp knife	Ditto	...	Ditto.
723	Four empty bottles	Ditto	...	Ditto.
724	Tin box containing red powder	Ditto	...	Ditto.
725	Sugar basin	Ditto	...	Ditto.
726	Stone dish and cups	Ditto	...	Ditto.
727	Five tins of paste	Ditto	...	Ditto.
728	Phials and tubes	Ditto	...	Ditto.
729	A small bottle	Ditto	...	Ditto.
730	A paper packet	Ditto	...	Ditto.
731	...	Ditto	...	Ditto.
732	...	Ditto	...	Ditto.
733	...	Ditto	...	Ditto.
734	...	Ditto	...	Ditto.
735	...	Ditto	...	Ditto.
736	...	Ditto	...	Ditto.
737	...	Ditto	...	Ditto.
738	...	Ditto	...	Ditto.
739	...	Ditto	...	Ditto.
740	...	Ditto	...	Ditto.
741	...	Ditto	...	Ditto.
742	...	Ditto	...	Ditto.
743	...	Ditto	...	Ditto.
744	...	Ditto	...	Ditto.

710 to 716 found at 15,
Gopi Mohan Dutt's
Lane

717 to 734 found at 38-4,
Raja Naba Krishna
Street

Distin- guishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
725	A Zinc tube	11th June 1908	Without.	
726	A sponge, a knife with stains and another knife	Ditto	Ditto	
727	Three bottles, brass cup and earthen pot	Ditto	Ditto	
728	Two phials, a tin pot and tin tray	Ditto	Ditto	
729	A glass tumbler containing white crystals	Ditto	Ditto	
730	11 phials and a stone jar	Ditto	Ditto	
731	Cylinders	Ditto	Ditto	
732	Two bottles	Ditto	Ditto	
733	A piston cylinder	Ditto	Ditto	
734	A phial (found under Hem's bed)	Ditto	Ditto	
735	A package } contents described on pages 32 and 33 of deposition of P. W.	Ditto	Ditto	
736	A package	Ditto	Ditto	
737	A book containing instructions for preparing explosives	Ditto	Ditto	
738	A book containing instructions for preparing explosives	Ditto	Ditto	
739	Contents of shells Ex. No 614 found at 134 Har- rison Road.	12th June 1908	Ditto	
740	An Elementary Algebra	Ditto	Ditto	
741	Two other books with the name Bejoy Kumar Nag	15th June 1908	Ditto	
742	Blackman's Geography	Ditto	Ditto	
743	"Amara Kothay" a book of songs	Ditto	Ditto	
744	A postcard	Ditto	Ditto	
745	A postcard	Ditto	Ditto	
1 and 2	Found at house in which Susi, Hem, Barendra Sen were arrested.			
746	741 to 746 found at the house of accused Bijoy K. Nag at Khulna.			

745	A copy of Yugantar with an address posted on it ...	Ditto	...	Ditto.	...	747 to 756 found at house of accused India Bhushan Roy at Kachua.
746	A manuscript note-book ...	Ditto	...	Ditto.	...	
747	A book ...	Ditto	...	Ditto.	...	
748	A Dictionary ...	Ditto	...	Ditto.	...	
749	Portrait of Arabinda Ghosh in a frame ...	Ditto	...	Ditto.	...	
750	Another portrait of Arabinda Ghosh ...	Ditto	...	Ditto.	...	
751	Picture of Bhupendra Nath Dutt, former editor of Yugantar.	Ditto	...	Ditto.	...	
752	Picture of Bengal 50 years hence ...	Ditto	...	Ditto.	...	
753	A collection of articles ...	Ditto	...	Ditto.	...	
754	A list of rules of the Somiti with 23 names ...	Ditto	...	Ditto.	...	
755	A manuscript book of Indu Bhushan ...	Ditto	...	Ditto.	...	
756	12 postcards ...	Ditto	...	Ditto.	...	
757	A letter, dated May 25th. from Moti Lall, written after arrest.	Ditto	...	Ditto.	...	757 to 759 found at house of Moti Lal Bose.
758	Photo of group including Moti Lall Bose	Ditto	...	Ditto.	...	
759	Three 5's of letters ...	Ditto	...	Ditto	...	760 to 764 found at 30-2, Harrison Road.
760	Four account books ...	Ditto	...	Ditto.	...	
761	Three copies of "The Modern Art of War" in Bengali.	Ditto	...	Ditto.	...	
762	Bundle of paper...	Ditto	...	Ditto	...	
763	A copy of Yugantar addressed to Birendra Nath Ghose.	Ditto	...	Ditto ...	}	Found at house of accused Birendra Nath Ghosh at Jessore.
764	A slip of paper written in Bengali addressed to Abinash, dated Phagun, 24th	Ditto	...	Ditto ...		
765	A postcard ...	Ditto	...	Ditto	...	
766	Two wrappers ...	Ditto	...	Ditto	...	
767	India's national anthem with P. Chaki written on it.	Ditto	...	Ditto	...	767 to 777 found at Seal's lodge, Baidya-nath.
768	A slip containing routine of daily work...	Ditto	...	Ditto	...	
769		Ditto	...	Ditto	...	
770		Ditto	...	Ditto	...	
771		Ditto	...	Ditto	...	

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
772	Nava Sakti Newspaper of March 26th, 1908, containing an article "Rumours of India being independent (Ex. 772a).	17th June 1908	Without.	
773	A copy of the "Bandemataram," dated February 10th, 1908, with an article about Leakat Hossain (Ex. 773a).	Ditto	Ditto.	
774	A postcard addressed to Upendra Nath Banerjee...	Ditto	Ditto.	
775	The front page of the Udbodhon ...	Ditto	Ditto.	
776	A slip of paper, dated Chaitra 2nd, written to Upen Bahad.	Ditto	Ditto.	
777	A red label ...	Ditto	Ditto ...	This was found by witness at Serampore.
778	Money-order receipt ...	Ditto	Ditto ...	
779	Ditto	Ditto	Ditto ...	
780	Four documents and list of them ...	Ditto	Ditto.	
781	Three copies of "The Modern Art of War"	Ditto	Ditto ...	781 to 790 found at house of Narendra K. Goswami at Serampore.
782	Two letters, a post card and a pamphlet	Ditto	Ditto.	
783	Three copies of "Position of Bengal" ...	Ditto	Ditto.	
784	Four copies of "Bhuvanai Mandir" ...	Ditto	Ditto.	
785	Two cotton-foil books of subscriptions to the Yugantar.	Ditto	Ditto.	
1 and 2				

APPENDIX A.

790	Forty-three copies of Matri Puja Dikhya Mantra ...	Ditto	...	Ditto
791	A paper with manuscript writing ...	Ditto	...	Ditto
792	Ditto ditto ...	Ditto	...	Ditto
793	Two pictures of Arabinda Ghosh ...	Ditto	...	Ditto
794	One picture of Bhupendra Nath Dutt ...	Ditto	...	Ditto
795	A copy of "The Modern Act of War ...	Ditto	...	Ditto
796	Thirteen books and papers ...	Ditto	...	Ditto
797	Ten copies of Arabinda Ghosh's pictures ...	Ditto	...	Ditto
798	A spear head ...	Ditto	...	Ditto
799	A paper ...	Ditto	...	Ditto
800	A plan with a list of names on the back ...	Ditto	...	Ditto
801	A plan showing Amherst Street ...	Ditto	...	Ditto
802	Post card from Bombay addressed to Hrishkesh Kanjilal.	Ditto	...	Ditto
803	A letter addressed to Hrishkesh consisting of 2 sheets.	Ditto	...	Ditto
804	Twenty-one empty revolver cartridges and quantity of shot.	Ditto	...	Ditto
805	A small tin box containing two loaded revolver cartridges	Ditto	...	Ditto
806	A tin box of percussion caps	Ditto	...	Ditto
807	A letter signed by Hem Chandra Sen	Ditto	...	Ditto
808	A post card signed by Hem Chandra Sen	Ditto	...	Ditto
809	A rent receipt ...	Ditto	...	Ditto
810	Ditto ...	Ditto	...	Ditto
811	Agreement ...	Ditto	...	Ditto
812	Two entries in the account book	Ditto	...	Ditto
813	5 receipts ...	Ditto	...	Ditto
814	...	Ditto	...	Ditto
815	...	Ditto	...	Ditto
816	...	Ditto	...	Ditto
817	...	Ditto	...	Ditto
818	...	Ditto	...	Ditto
819	...	Ditto	...	Ditto
820	...	Ditto	...	Ditto
821	...	Ditto	...	Ditto
822	...	Ditto	...	Ditto
823	...	Ditto	...	Ditto
824	...	Ditto	...	Ditto
825	...	Ditto	...	Ditto
826	...	Ditto	...	Ditto
827	...	Ditto	...	Ditto
828	...	Ditto	...	Ditto
829	...	Ditto	...	Ditto
830	...	Ditto	...	Ditto
831	...	Ditto	...	Ditto
832	...	Ditto	...	Ditto
833	...	Ditto	...	Ditto
834	...	Ditto	...	Ditto
835	...	Ditto	...	Ditto
836	...	Ditto	...	Ditto
837	...	Ditto	...	Ditto
838	...	Ditto	...	Ditto
839	...	Ditto	...	Ditto
840	...	Ditto	...	Ditto
841	...	Ditto	...	Ditto
842	...	Ditto	...	Ditto
843	...	Ditto	...	Ditto
844	...	Ditto	...	Ditto
845	...	Ditto	...	Ditto
846	...	Ditto	...	Ditto
847	...	Ditto	...	Ditto
848	...	Ditto	...	Ditto
849	...	Ditto	...	Ditto
850	...	Ditto	...	Ditto
851	...	Ditto	...	Ditto
852	...	Ditto	...	Ditto
853	...	Ditto	...	Ditto
854	...	Ditto	...	Ditto
855	...	Ditto	...	Ditto
856	...	Ditto	...	Ditto
857	...	Ditto	...	Ditto
858	...	Ditto	...	Ditto
859	...	Ditto	...	Ditto
860	...	Ditto	...	Ditto
861	...	Ditto	...	Ditto
862	...	Ditto	...	Ditto
863	...	Ditto	...	Ditto
864	...	Ditto	...	Ditto
865	...	Ditto	...	Ditto
866	...	Ditto	...	Ditto
867	...	Ditto	...	Ditto
868	...	Ditto	...	Ditto
869	...	Ditto	...	Ditto
870	...	Ditto	...	Ditto
871	...	Ditto	...	Ditto
872	...	Ditto	...	Ditto
873	...	Ditto	...	Ditto
874	...	Ditto	...	Ditto
875	...	Ditto	...	Ditto
876	...	Ditto	...	Ditto
877	...	Ditto	...	Ditto
878	...	Ditto	...	Ditto
879	...	Ditto	...	Ditto
880	...	Ditto	...	Ditto
881	...	Ditto	...	Ditto
882	...	Ditto	...	Ditto
883	...	Ditto	...	Ditto
884	...	Ditto	...	Ditto
885	...	Ditto	...	Ditto
886	...	Ditto	...	Ditto
887	...	Ditto	...	Ditto
888	...	Ditto	...	Ditto
889	...	Ditto	...	Ditto
890	...	Ditto	...	Ditto
891	...	Ditto	...	Ditto
892	...	Ditto	...	Ditto
893	...	Ditto	...	Ditto
894	...	Ditto	...	Ditto
895	...	Ditto	...	Ditto
896	...	Ditto	...	Ditto
897	...	Ditto	...	Ditto
898	...	Ditto	...	Ditto
899	...	Ditto	...	Ditto
900	...	Ditto	...	Ditto
901	...	Ditto	...	Ditto
902	...	Ditto	...	Ditto
903	...	Ditto	...	Ditto
904	...	Ditto	...	Ditto
905	...	Ditto	...	Ditto
906	...	Ditto	...	Ditto
907	...	Ditto	...	Ditto
908	...	Ditto	...	Ditto
909	...	Ditto	...	Ditto
910	...	Ditto	...	Ditto
911	...	Ditto	...	Ditto
912	...	Ditto	...	Ditto
913	...	Ditto	...	Ditto
914	...	Ditto	...	Ditto
915	...	Ditto	...	Ditto
916	...	Ditto	...	Ditto
917	...	Ditto	...	Ditto
918	...	Ditto	...	Ditto
919	...	Ditto	...	Ditto
920	...	Ditto	...	Ditto
921	...	Ditto	...	Ditto
922	...	Ditto	...	Ditto
923	...	Ditto	...	Ditto
924	...	Ditto	...	Ditto
925	...	Ditto	...	Ditto
926	...	Ditto	...	Ditto
927	...	Ditto	...	Ditto
928	...	Ditto	...	Ditto
929	...	Ditto	...	Ditto
930	...	Ditto	...	Ditto
931	...	Ditto	...	Ditto
932	...	Ditto	...	Ditto
933	...	Ditto	...	Ditto
934	...	Ditto	...	Ditto
935	...	Ditto	...	Ditto
936	...	Ditto	...	Ditto
937	...	Ditto	...	Ditto
938	...	Ditto	...	Ditto
939	...	Ditto	...	Ditto
940	...	Ditto	...	Ditto
941	...	Ditto	...	Ditto
942	...	Ditto	...	Ditto
943	...	Ditto	...	Ditto
944	...	Ditto	...	Ditto
945	...	Ditto	...	Ditto
946	...	Ditto	...	Ditto
947	...	Ditto	...	Ditto
948	...	Ditto	...	Ditto
949	...	Ditto	...	Ditto
950	...	Ditto	...	Ditto
951	...	Ditto	...	Ditto
952	...	Ditto	...	Ditto
953	...	Ditto	...	Ditto
954	...	Ditto	...	Ditto
955	...	Ditto	...	Ditto
956	...	Ditto	...	Ditto
957	...	Ditto	...	Ditto
958	...	Ditto	...	Ditto
959	...	Ditto	...	Ditto
960	...	Ditto	...	Ditto
961	...	Ditto	...	Ditto
962	...	Ditto	...	Ditto
963	...	Ditto	...	Ditto
964	...	Ditto	...	Ditto
965	...	Ditto	...	Ditto
966	...	Ditto	...	Ditto
967	...	Ditto	...	Ditto
968	...	Ditto	...	Ditto
969	...	Ditto	...	Ditto
970	...	Ditto	...	Ditto
971	...	Ditto	...	Ditto
972	...	Ditto	...	Ditto
973	...	Ditto	...	Ditto
974	...	Ditto	...	Ditto
975	...	Ditto	...	Ditto
976	...	Ditto	...	Ditto
977	...	Ditto	...	Ditto
978	...	Ditto	...	Ditto
979	...	Ditto	...	Ditto
980	...	Ditto	...	Ditto
981	...	Ditto	...	Ditto
982	...	Ditto	...	Ditto
983	...	Ditto	...	Ditto
984	...	Ditto	...	Ditto
985	...	Ditto	...	Ditto
986	...	Ditto	...	Ditto
987	...	Ditto	...	Ditto
988	...	Ditto	...	Ditto
989	...	Ditto	...	Ditto
990	...	Ditto	...	Ditto
991	...	Ditto	...	Ditto
992	...	Ditto	...	Ditto
993	...	Ditto	...	Ditto
994	...	Ditto	...	Ditto
995	...	Ditto	...	Ditto
996	...	Ditto	...	Ditto
997	...	Ditto	...	Ditto
998	...	Ditto	...	Ditto
999	...	Ditto	...	Ditto
1000	...	Ditto	...	Ditto

791 to 799 found at house of Rshikesh Kanjilal at Chitra.

Found at house of Norendra N. Gossain at Serampur

805 to 808 produced by P. W. 55.

809 to 811 produced by P. W. 56.

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
810 & 811 }	Counterfoils of Ex. 805-806 ...	17th June 1908	Without.	Produced by P. W. 57.
812 }	Document ...	Ditto	Ditto	813 to 817 produced by P. W. 58.
813 }	Record of land acquisition case of 41, Champatala lane containing Ex. 807 1 and 2.	22nd June 1908	Ditto	Produced by P. W. 61.
814 }	Copy of notice ...	Ditto	Ditto	Found at 1½ Gopi M. Dutti's Lane.
815 }	Muktearnama ...	Ditto	Ditto	822 to 828 found at house of Sudhir K. Sarcar at Khulna.
816 }	Petition ...	Ditto	Ditto	
817 }	Another muktearnama ...	Ditto	Ditto	
818 }	Postcard ...	Ditto	Ditto	
819 }	A label for outside wrapper...	Ditto	Ditto	
820 }	A paper ...	Ditto	Ditto	
821 }	A paper ...	Ditto	Ditto	
822 }	A bundle of post cards and letters	Ditto	With objection.	
823 }	Four post-cards ...	Ditto	Without	
824 }	Two letters ...	Ditto	Ditto.	
825 }	28 blank Yaganar postcards	29th June 1908	Ditto	829 to 838 found at 24, College Street.
826 }	6 red Yaganar postcards ...	Ditto	Ditto	

831	A receipt for books with the name of A. Bhattacharyya.	Ditto	...	Ditto.
832	4 certificates of Sallendra Nath Bose ...	Ditto	...	Ditto.
833	Letter containing Ex. 832	Ditto	...	Ditto.
834	Account Book of Diadaya! Bose	Ditto	...	Ditto.
835	Book of Kadar Nath Bose and sons of Arbella	Ditto	...	Ditto.
836	Photograph of Sallendra Bose	Ditto	...	Ditto.
837	Letter addressed to Abinash Bhattacharyya	Ditto	...	Ditto.
838	A book "Kamini Kanchan" ...	Ditto	...	Ditto.
839	Two diaries of Jogendra Nath Sen	3rd July 1908	...	...
840	A post-card addressed to Abhoy Narain Mitter	...	...	...
841	Revolver belonging to Satyendra Nath Bose of Midnapur.	...	...	...
842	Revolver	...	...	...
843	Post-card	...	...	...
844	Post-card	...	...	...
845	Post-card	...	...	...
846	Money Order form	...	...	...
847	3 letters addressed to witness No. 88, B. B. Gupta, Inspector of Police and others.	...	...	...
848	A note book with symbols in it	6th July 1908	...	...
849	39 copies of the Yugantar of different dates	...	...	...
850	A letter	...	...	...
851	A post card	...	...	...
852	A receipt given by Hem Ch. Das	...	...	...
853	A receipt	...	...	...
854	Signature in a note book	7th July 1908	...	...
855	A book	Ditto	...	...
856	A book	Ditto	...	...
857	An entry in account book for Rs. 4	9th July 1908	...	...
858	An entry in account book for Rs. 14	Ditto	...	...
859		...	...	Without ...
860		...	...	Ditto.

839 to 841 found in the house search of Furno Ch. Sen.

844 and 845 produced by P. W. No. 84.

Produced by P. W. No. 88.

Found at the house of Krisnayban Sandyal at Malda.

Produced by P. W. No. 99.

Found at the house of Nirapada Roy.

859 to 861 produced by P. W. No. 121.

Distin- guish- ing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after, or without objection.	REMARKS.
1	2	3	4	5
861	An entry in order book for a tank ...	9th July 1908	Without	Produced by P. W. No. 124.
862	Specimens of Profulla Chaki's handwriting ...	Ditto	Ditto.	864 to 864 produced by P. W. No. 125.
863	An entry in the account book ...	Ditto	Ditto.	865 and 866 produced by P. W. No. 132.
864	Counterfoil of Ex. 141 ...	Ditto	Ditto.	Produced by 141.
864	Ditto	10th July 1908	Ditto.	865 and 866 produced by P. W. No. 132.
864	Ditto	Ditto	Ditto.	Produced by 141.
864	Ditto	Ditto	Ditto.	10th July 1908, 868 pro- duced by P. W. No. 44.
865	Notice of Parcel... ..	Ditto	Ditto.	869 and 870 produced by P. W. No. 148.
866	Receipt for Money Order ...	Ditto	Ditto.	871 to 873 produced by P. W. No. 149.
867	An entry in account book for Re. 1-8 ...	Ditto	Ditto.	874 to 877 produced by P. W. No. 150.
868	Revolver	13th July 1908	Ditto.	
869	Money-order receipt ...	14th July 1908	Ditto.	
870	An entry in the money-order journal ...	Ditto	Ditto.	
871	Money-order receipt ...	Ditto	Ditto.	
872	An entry in the money-order journal ...	Ditto	Ditto.	
873	Money-order form ...	Ditto	Ditto.	
874	Medini Bandhab newspaper, dated 26th June 1907	Ditto	Ditto.	
875	Medini Bandhab newspaper, dated 11th September	Ditto	Ditto.	

876	A letter, written by Hem Chandra Das	...	Ditto	...	Ditto.	...	878 to 883 produced by P. W. No. 154.
877	Ditto	...	Ditto	...	Ditto.	...	
878	Money-order receipt	...	Ditto	...	Ditto.	...	
879	Receipt	...	Ditto	...	Ditto.	...	
880	Money-order coupon	...	Ditto	...	Ditto.	...	Produced by P. W. No. 157.
881	Post office Peon's book	...	Ditto	...	Ditto.	...	
883		...		...
884		...		...			884 to 896 found at the house of Birendra Nath Ghose, at Sagar Danri in Jessore.
895	A letter	...	Ditto	...	Ditto.	...	P. W. No. 173.
896	A letter addressed to Upendra Nath Banerji, interpreted by Post Master.	...	Ditto	...	Ditto.	...	
897	Eight copies of <i>Navasakti</i> of June 10th, 1907	...	Ditto	...	Ditto.	...	
898	One copy of <i>Navasakti</i> of June 13th, 1907	...	Ditto	...	Ditto.	...	
899	One copy of <i>Navasakti</i> of July 16th, 1907	...	Ditto	...	Ditto.	...	
900	One copy of <i>Sandhya</i> of June 3, 1908	...	Ditto	...	Ditto.	...	897 to 904 produced by P. W. No. 168.
901	One receipt for a money-order for Re. 1, payable to Manager of <i>Navasakti</i>.	...	Ditto	...	Ditto.	...	
902	One <i>Bande Mataram</i> Exercise book, containing account of sales of <i>Navasakti</i>.	...	Ditto	...	Ditto.	...	
903	One account book of <i>Sebak Samiti</i>	...	Ditto	...	Ditto.	...	
904	One note-book containing accounts of sale of <i>Navasakti</i> with the name of Kunja Lal Saha on first page.	...	Ditto	...	Ditto.	...	905 produced by P. W. No. 85.
905	Money-order for Rs. 8, payable to Arabinda Ghose	...	Ditto	...	Ditto.	...	906 produced by P. W. No. 171.
906	An entry in the Register of Money-order of Bowbazar Post Office.	...	Ditto	...	Ditto.	...	

Distin- guishing mark or number	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after, or without objection.	REMARKS.
1	2	3	4	5
907 to 915	Declaration ... ..	...	...	Produced by P. W. No. 172.
916	An entry in the journal of money-orders	17th July 1908	Without.	...
917	Ditto post man's book.	18th July 1908	Ditto.	...
918	Ditto journal of money-orders.	...	...	916 to 925 produced by P. W. 173.
919	Ditto post man's book.	...	...	...
920	Ditto journal of money order.	...	...	...
921	Ditto peon's book	...	...	...
922	Ditto journal of money-order.	...	...	...
923	Ditto peon book.	...	...	...
924	A letter addressed to Upendra Nath Banerji.	...	...	...
925	Envelope of Exh. 924.	18th July 1908	With objec- tion.	926 to 951 produced by P. W. 172.
926	Record of case No. 2665 of 1907 Presidency Magis- trate's Court.	Ditto	Ditto.	...
927(a)	Judgment of the above case.	...	...	...
927(b)	Charge with three head	...	...	...
927(c)	Some <i>Bangla</i> paper with translation.	...	...	...
927(d)	Counterfoil of the order of 1,000 copies of <i>Sonar</i> <i>Bangla</i>.	...	...	...
928	Record of case No. 2677 of 1907 Presidency Magis- trate's Court.	...	...	...
929(a)	Charge sheet against Srimanta.	...	...	...
929(b)	Ditto against Basudeb.	...	...	...

		18th July 1908	With objection.
907(c)	Judgment against Srimanta.		
907(d)	Ditto Basudeb.		
908	Record of case No. 2913 of 1907 Presidency Magistrate's Court.		
909(a)	Judgment.		
909(b)	Charge sheet.		
909(c)	Copy of Yugantar.		
909(d)	Abimash's petition asking for the press.		
910(a)	Order of the High Court setting aside the order for confiscation.		
910(b)	Manuscript of Bartaman Rana Niti ...		
910(c)	Proof sheets of Bartaman Rana Niti.		
931	Proof sheets of the "Mukti kon Pathe?"		
932	Account book,		
933.	Record of case No. 367 of 1907 of Presidency Magistrate's Court.		
133(a)	Charge sheet.		
133(b)	Judgment.		
133(c)	Search list 41, Champatollah 1st lane of 1st July 1907.		
133(d)	Search list of 7th August 1907, 28-1 Mirzapore Street.	Ditto	Ditto.
933(e)	A collection of 46 letters	Ditto	Ditto.
133(f)	Account book of Swarawat Press	Ditto	Ditto.
934	Declaration	Ditto	Ditto.
935	Ditto	Ditto	Ditto.
936	Ditto	Ditto	Ditto.
937	Ditto	Ditto	Ditto.
938	Record of case No. 5666 of 1907 of Presidency Magistrate's Court.	Ditto	Ditto.
938(a)	Charge sheet	Ditto	Ditto.
938(b)	Judgment	Ditto	Ditto.

Distinguishing mark or number	DESCRIPTION OF ARTICLES.	Date of admission	Whether admitted after or without objection.	REMARKS
1	2	3	4	5
938(c)	Search list of 5, Ramdhan Mistri's Street	18th July 1908	With objection.	
938(d)	13 sheets of proof sheets of articles	Ditto	Ditto.	
938(e)	An address book	Ditto	Ditto.	
938(f)	Receipt from the office of the Inspector-General of Registration.	Ditto	Ditto.	
938(g)	Three sheets of proof sheets of articles	Ditto	Ditto.	
939	Declaration	Ditto	Ditto.	
940	Ditto	Ditto	Ditto.	
941	Record of case No. 1716 of 1908 of Presidency Magistrate's Court.	Ditto	Ditto.	
941(a)	Charge sheet	Ditto	Ditto.	
941(b)	Judgment	Ditto	Ditto.	
941(c)	Search list of 68, Maniktola Street	Ditto	Ditto.	
942	Record of case No. 284, of 1908, of Presidency Magistrate's Court.	Ditto	Ditto.	
942(a)	Charge sheet	Ditto	Ditto.	
942(b)	Judgment	Ditto	Ditto.	
942(c)	Search list of 48 Grey Street	Ditto	Ditto.	
942(d)	Declaration	Ditto	Ditto.	
942(e)	Two books containing cuttings from newspaper about the partition of Bengal.	Ditto	Ditto.	
942(f)	Declaration	Ditto	Ditto.	
942(g)	Ditto	Ditto	Ditto.	

945	Declaration	...	...	...	Ditto.
946	Ditto	...	...	...	Ditto.
947	Ditto	...	...	...	Ditto.
948	Ditto	...	...	...	Ditto.
949	Ditto	...	...	...	Ditto.
950	Record of case No. 3627 of 1907 of Presidency Magistrate's Court.	...	...	...	Ditto.
950(a)	Charge Suit	...	...	...	Ditto.
950(b)	Judgment	...	...	...	Ditto.
950(c)	Declaration	...	...	...	Ditto.
950(d)	Statement of Aravindo Ghose	...	...	...	Ditto.
950(e)	Search list of 2-2, Creek Row	...	...	...	Ditto.
950(f)	Judgment of High Court	...	...	...	Ditto.
950(g)	Declaration	...	...	...	Ditto.
951	Pieces of cast-iron pot	...	...	...	Without.
952	5 pieces of iron	...	...	...	Ditto. ...
953	3 pieces of similar iron	...	...	...	Ditto. ...
954	3 pieces of lead	...	...	...	Ditto.
955	2 other pieces of lead	...	...	...	Ditto.
956	Some cotton wool	...	...	...	Ditto.
957	Shreds of cotton	...	...	...	Ditto.
958	Some Sal leaves...	...	...	...	Ditto.
959	Some shreds of lead	...	...	...	Ditto.
960	Some wax droppings	...	...	...	Ditto.
961	2 pieces of strings	...	...	...	Ditto.
962	2 pieces of card board box	...	...	...	Ditto.
963	2 pieces of newspaper	...	...	...	Ditto.
964	A piece of newspaper	...	...	...	Ditto.
965	A piece of English Newspaper	...	...	...	Ditto.
966	Ditto	...	...	...	Ditto.
967	A piece of waxed paper	...	...	...	Ditto.
968	A piece of map of Bengal Nagpur Railway guide...	...	...	...	Ditto.
969	A piece of Chamo brown paper	...	...	...	Ditto.
970	Portions of scrapings from Rail and Engine	...	...	...	Ditto.
971		...	...	...	Ditto.

P. W. No. 176.

20th July 1908

1000	A post card	...	...	...	Ditto.
1001	A pamphlet called Foreign mails	...	...	...	Ditto.
1002	A letter in Bengali addressed to Nikhileswar	...	...	...	Ditto.
1003	An envelope	...	...	...	Ditto.
1004	An account book	...	...	...	Ditto.
1005	A slip showing Nikhileswar's account	...	...	...	Ditto.
1006	Papers	...	...	...	Ditto.
1007	V. P. Registrar	...	...	...	Ditto.
1008	An account book of <i>Yagankar</i>	...	...	...	Ditto.
1009	A letter from Abinash to Shedja	...	...	...	Ditto.
1010	A report of the famine work of the Anusilan Samity	...	...	...	Ditto.
1011	Acquittance roll	...	...	...	Ditto.
1012	M. O. No. 1245 of 9th March 1908 payable to Sarejini Chose.	...	...	...	Ditto.
1013	M. O. No. 484 of 7th October 1907, payable to Manager, <i>Navasahi</i> from Kunja Lal Shaha.	...	...	...	Without.
1014	M. O. No. 3883 in favour of Barindra K. Chose at 32, Muraripukur Road	...	...	...	Ditto.
1015	M. O. No. 1469 of 21st December 1907 in favour of B. K. Ghose at 32, Muraripukur Road.	...	...	...	Ditto.
1016	M. O. No. 516 from Josidi of 13th February 1908 for Rs. 50 payable to Upendra Nath Banerjee at 32, Muraripukur Road.	...	...	...	Ditto.
1017	M. O. No. 634 from Josidi payable to Upendra Nath Banerjee.	...	...	...	Ditto.
1018	A copy of Samiti Prospectus	...	...	...	Ditto.
1019	Record in the case against Sosal Kumar Sen under section 332 I. P. C. of the Chief Presidency Magistrate's Court.	...	...	...	Ditto.
1020	A copy of the <i>Englishman</i> dated 4th December 1907.	...	...	...	Ditto.
1021	A copy of the <i>Bengali</i> , dated 26th November 1907	...	...	...	Ditto.

Produced by P. W. 184.

1110 to 1142 produced by P. W. 187.

Distin- guishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1012	A sheet of <i>Bande Mataram</i> of 25th November ..	21st July 1908	Without.	
1013	A piece of the <i>Hindustan</i> of 30th November 1907.	Ditto	Ditto.	
1014 and 1015	Two torn sheets of an English paper ...	Ditto	Ditto.	
1016	Two pieces of round thin paper ...	Ditto	Ditto.	
1017	Two pieces of card board box ...	Ditto	Ditto.	
1018	Two blank papers ...	Ditto	Ditto.	
1019	Some cotton wool ...	Ditto	Ditto.	
1020	Some sal leaves ...	Ditto	Ditto.	
1021	A piece of Dhoti partly eaten by white ants	Ditto	Ditto.	
1022	A book called <i>Rosebuds</i> ...	Ditto	Ditto.	
1023	A book <i>Swadeshi Reen</i> ...	Ditto	Ditto.	
1024	<i>Jatiya Samasya</i> (National cries) ...	Ditto	Ditto.	
1025	<i>Mantrir sedhan kimba sarir patan</i> (to do or die) ...	Ditto	Ditto.	
1026	<i>Rajati Bhikhya</i> printed and published at Yugantar office.	22nd July 1908	Ditto.	
1027	A post card addressed to Bhupendra Nath Bose ...	Ditto	Ditto.	
1028	A letter written by A. C. Banerjee ...	Ditto	Ditto.	
1029	Envelope addressed to A. Chowdhury containing the above letter.	Ditto	Ditto.	

1030	A deed of gift of 7th March 1908 in favour of Radha Nath Pati.	Ditto	...	Ditto.
1031	Draft of Ex. 1030	Ditto	...	Ditto.
1032	An Urdu leaflet by Liakat Hossain with a pencil endorsement	Ditto	...	Ditto.
1033	A Bengali leaflet...	Ditto	...	Ditto.
1034	A Rakhi Bandhan leaflet	Ditto	...	Ditto.
1035	A list of names and sums of money written opposite the names.	Ditto	...	Ditto.
1036	A receipt for Volunteers badge and flag signed S C. Das.	Ditto	...	Ditto.
1037	A letter to Satyendra Nath Bose, c/o H Ghose, 32 Muratipukur road.	Ditto	...	Ditto.
1038	Two copies of the Bengal Nationalist Association ...	Ditto	...	Ditto.
1039	A photo of Subodh Kumar Bose, brother of Satyendra Nath Bose.	Ditto	...	Ditto.
1040	A photo of Subodh Kumar Bose with Hem Chandra Das.	Ditto	...	Ditto.
1041	A photo of Subodh Bose, Bhupendra Bose, Satyendra Bose and Sarat Kumar Bose.	Ditto	...	Ditto.
1042	An order for photographic materials.	Ditto	...	Ditto
1043	Record of the case against Nalini Kanto Sircar section 32 Police Act of Rangpur District Magistrate's Court.	Ditto	...	Ditto.
1044	A bomb	10th Aug. 1908	Article 1	Ditto 199.
1045	A revolver	Ditto	...	Ditto 200.
1045(a)	Railway ticket	Ditto	...	Ditto
1046	Examination paper of Kristo Jeban Sanyal	11th Aug. 1908	...	204-
1047	Ditto	...	...	Ditto
1048	Examination paper of Narendranath Buxi	11th Aug. 1908	...	Ditto
1049	Attendance Register of Giridih School	...	Without.	

Produced by P. W. 190.

Dis- gus- hing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection	REMARKS.
1	2	3	4	5
1050	Telegram ...	11th Aug. 1908	...	Produced by P. W. 205.
1051	Paper ...	...	...
1052	Letter from H. Dutta to Mullik ...	...	...
1053	A letter from N. Gossain to Mullik ...	...	...
1054	A letter from S. Sen ...	...	...
1055	Envelope of the above ...	...	...
1056	List of accounts ...	11th Aug. 1908	...	
1057	Note Book ...	Ditto	...	
1058	Bhabani Mandir... ..	Ditto	...	
1059	Account ...	Ditto	...	
1060	Letter addressed to K. K. Mitter from Aravinda Ghose.	12th Aug. 1908	...	Ditto 208. Admitted subject to sub-sequent proof. Pro-duced by P. W. 216. Produced by P. W. 216. Ditto 217. Ditto 218. Ditto 219. Ditto 217. P. W. No. 219 produced.
1061	Deposit receipt for Ra. 500 ...	Ditto	...	
1062	Bank Pass Book...	Ditto	...	
1063	Post card ...	Ditto	...	
1064	Letter and envelope ...	Ditto	...	
1065	...	Ditto	...	
1066	...	Ditto	...	
1067	Cash Book of Bande Matarum ...	Ditto	...	
1068	Ambulance Register of Bande Matarum office ...	Ditto	...	
1069	Money order for Ra. 25, addressed to Aravinda Ghose of Baroda City.	13th Aug. 1908	Without ...	

1071	Money order for Rs. 50 addressed to Aravinda Chatter for Baroda.	Ditto	...	Ditto	...
1072	Letter for Indra Nath to Tara Nath Rai at Lanchar. A letter of 15th June 1904 from Debabrata Bose to Tara Nath Rai.	Ditto	...	Ditto	...
1073	Post card from Abinash Chakrabarty a munsiff ...	Ditto	...	Ditto	...
1074	A letter from Indra to Tara Nath of Kartick 4th ...	Ditto	...	Ditto	...
1075	A letter from Abinash Ch. at Midnapur of 17th February 1906.	Ditto	...	Ditto	...
1076	A manuscript article entitled "Be prepared to die"	Ditto	...	Ditto	...
1077	A letter from Debabrata Bose to Tara Nath Roy, 19th April 1904.	Ditto	...	Ditto	...
1078	A post card from Manaranjan Guha to Tara Nath Roy of 22nd March 1907	Ditto	...	Ditto	...
1079	A post card of 7th September 1907, from Debendra Chandra Bhattacharjee to Abinash Bhattacharjee.	Ditto	...	Ditto	...
1080	An inflaming pamphlet called "a vision" of mother Kali.	Ditto	...	Ditto	...
1081	A post card addressed to Abinash Bhattacharjee post mark September 11th, 1907.	Ditto	...	Ditto	...
1082	A letter from Charu Ch. Chaki to Abinash Ch. Bhattacharyya 18th October 1907.	...	...	...	...
1083	A post card from Indra, dated Sravan 28th, to Tara Nath, refers to A. G.	...	...	...	...
1084	A post card from Indra, post mark 20th September 1906 to Tara Nath.	...	...	...	...
1085	A post card from Indra Nath to Tara Nath of 27th Oct. 1906.	...	...	...	...
1086	A Municipal bill "	...	...	...	...
1087	An empty envelope of 5th May 1906, addressed to Tara Nath Roy 27, Kanai Lal Dhur's Lane.	13th Aug 1908	...	Without	...
1088	A post card from Birendra C. Sen, to Sanat K. Chakrabarty of 30th October 1907.	Ditto	...	Ditto	...

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission	Whether admitted after or without objection.	REMARKS
#	2	3	4	5
1089 }	A letter in an envelope from Bhaba Bhusan to Abinash Ch. Bhattacharjee A letter addressed to Dindoyal Bose and above that in pencil "Arbaha". Six books of counterfoils of receipts for subscription to Yugantar and other receipts. Municipal Trade receipt for printing of November 21st, 1907 for Rs. 6 Manuscripts of head lines which were afterwards printed in <i>Yugantar</i> paper. Manuscripts and printed letters of Chatra Bhandar A letter from Arabinda to Bepin about Dickinson and Subodh. A letter of 27th April 1908, addressed to Arabinda Ghose. A book called human bullets Legal opinion of Mr. B. Chakrabarty, Barrister-at-law, of 1st July, 1907. A slip of paper in Arabinda Ghose's hand writing. Another slip of paper in Arabinda Ghose's hand writing. Printed copy of Bhawasi Mandir Proof print of Bande Mataram Co., Ltd.	13th Aug. 1908.	...	P. W. No. 172.
1090 }		Ditto	...	
1091 }		Ditto	...	
1092 }		Ditto	...	
1093 }		Ditto	...	
1094 }		Ditto	...	
1095 }		Ditto	...	
1096 }		Ditto	...	
1097 }		Ditto	...	
1098 }		Ditto	...	
1099 }		Ditto	...	
1100 }		Ditto	Without.	P. W. No. 221.
1101 }		Ditto	Ditto.	
1102 }		Ditto	Ditto.	
1103 }		Ditto	Ditto.	

	Ditto	...	Ditto	...	Ditto	...
1104	A pencil memorandum about Sabodh Mullick's Directorship of Bande Mataram.	Ditto	...	Ditto	...	Ditto
1105	An appeal to Nationalist to support the Bande Mataram.	Ditto	...	Ditto	...	Ditto
1106	Part of an article about dispute between Nationalists and Moderates.	Ditto	...	Ditto	...	Ditto
1107	A draft article about the beaurocracy ...	Ditto	...	Ditto	...	Ditto
1108	Five Bengali copies of Bhawanji Mandir	Ditto	...	Ditto	...	Ditto
1109	New India Lecturer, a munificent offer ...	Ditto	...	Ditto	...	Ditto
1110	A list of shareholders ...	Ditto	...	Ditto	...	Ditto
1111	A letter with a pencil endorsement 'Yugantar Press Ra. 500'	Ditto	...	Ditto	...	Ditto
1112	A piece of paper with the name of Upendra Nath Banerjee.	Ditto	...	Ditto	...	Ditto
1113	Rough sketch of a road from Purulia to Ranchi ...	Ditto	...	Ditto	...	Ditto
1114	A telegram addressed to Arabinda Ghose, Ahmad nagar, 24th January 1908	Ditto	...	Ditto	...	Ditto
1115	A telegram for Chidaram from Viadras	Ditto	...	Ditto	...	Ditto
1116	A telegram from Dhulia addressed to Babu Arabinda Ghose	Ditto	...	Ditto	...	Ditto
1117	A telegram from Dhulia addressed to Alabinda Ghose	Ditto	...	Ditto	...	Ditto
1118	A telegram to Arabinda Ghose at 2/1 Creek Row ...	Ditto	14th Aug 1908	Ditto	...	Ditto
1119	A telegram addressed to Babu Arabinda from Dhulia	Ditto	...	Ditto	...	Ditto
1120	An envelope addressed to Binindra Ghose	Ditto	...	Ditto	...	Ditto
1121	Letter with envelope from Arabinda's wife to Arabinda.	Ditto	...	Ditto	...	Ditto
1122	Letter with envelope from Arabinda's wife to Arabinda	Ditto	...	Ditto	...	Ditto
1123	Letter from Arabinda's wife to Arabinda	Ditto	...	Ditto	...	Ditto
1124	A post card to the Editor, Bande Mataram of May 6th, 1908.	Ditto	...	Ditto	...	Ditto

P. W 221.

Distinguishing mark or number	DESCRIPTION OF ARTICLES.	2	Date of admission.	Whether admitted after or without objection.	REMARKS.
			3	4	5
1125	A purse	...	14th Aug. 1908	Without ...	P. W. No. 68.
1126	A bag	...	Ditto	Ditto	
1127	Nine pieces of metal	...	Ditto	Ditto	
1128	A letter from Birendra Chandra Sen to Arabinda	...	Ditto	Ditto	P. W. 4.
1129	A Book Desa Charya	...	24th Aug. 1908	Ditto	
1130	Letter addressed to Satyendra Nath Bose at Midnapore.	...	Ditto	With objection.	
1131	Envelope of the above	...	Ditto	Ditto	Found in box 353.
1132	An envelope addressed to Bejoy Chander Bhattacharjee at 10 Ranisankari's Lane, Kalighat.	...	25th Aug. 1908	Without ...	
1133	A letter beginning "my dear Bejoy, do justice to the thing entrusted to you."	...	Ditto	Ditto	
1134	Post-card with reference to Satya Babu found in Hen's box.	...	Ditto	Ditto	
1135	<i>Indra's things.</i>	...	...	...
1136	A Winchester repeating rifle	...	25th Aug. 1908	Without.	1135 to 1136 found at 57, Colaba Street.
1137	A single-barrelled rifle	...	Ditto	Ditto.	
1138	A military sword	...	Ditto	Ditto.	
1139	A sword in leather scabbard	...	Ditto	Ditto.	
1140	A sword without scabbard	...	Ditto	Ditto.	
1141	Two scabbards without swords	...	Ditto	Ditto.	
1142	A six-chambered nickel plated revolver...	...	...	...

An account book and within this book a pencil sketch.			25th Aug. 1908	...
1143	An account book and within this book a pencil sketch.	...	Ditto	...
1144	2 pencil sketches now in the book	...	Ditto	...
1145	A copy of Gita	...	Ditto	...
1146	A book containing notes	...	Ditto	...
1147	A book Bengal and Northern Railway Time Table for January 1906.	...	Ditto	...
1148	A photo of S. C. Biswas	...	Ditto	...
1149	A photo	...	...	...
1150	2 Photographs	...	25th Aug. 1908	...
1151	A photograph	...	Ditto	...
1152	A Matruja picture	...	Ditto	...
1153	A photo of Arabinda Ghose	...	...	...
1154	A photo of Lalpath Rai	...	...	...
1155	Picture of Surendra Nath Banerjee	...	...	...
1156	Picture of Bengali writing	...	...	...
1157	2 sheets of the <i>Sandhya</i> (reference to Jamalpore case and to Bhupendra Nath Dutt's case).	...	25th Aug. 1908	...
1158	2 copies of the <i>Sandhya</i>	...	...	...
1159	A copy of <i>Navasakti</i>	...	24th Aug. 1908	...
1160	15 printed maps	...	Ditto	...
1161	Half a sheet of paper with Bengali writing	...	Ditto	...
1162	Half a sheet of cutting of 22nd August 1907 about A newspaper cutting.	...	Ditto	...
1163	A newspaper cutting.	...	Ditto	...
1164	Indian paper "Nation building"	...	Ditto	...
1165	Printed paper.	...	Ditto	...
1166	Bengali notes.	...	Ditto	...
1167	8 sheets of Bengali notes in ink.	...	Ditto	...
1168	A Bengali manuscript article.	...	Ditto	...
1169	Five sheets of notes on travels.	...	Ditto	...
1170	A book of information for oriental students at American Universities.	...	Ditto	...
1171	A red note book with name of Barindra Ghose and Jogendra Nath Banerjee.	...	Ditto	...

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
	Photo of Brahma Bandhab Upadhyaya...	24th Aug. 1908.		
1171	3 receipts for telegrams with post seals 25th Decem-			
1172	ber 1907 Surat.			
1 to 3	Another picture of Brahma Bandhab Upadhyaya.			
1173	Two pictures of Arabinda Ghose ...			
1174	A picture of Bepin Chandra Pal.			
1 to 2	A picture of Bal Gangadhar Tilak.			
1175	A group of Arabinda Ghose and others.			
1176	2 groups of Bepin Pal, Tilak and Lajpath Rai.			
1177	Picture of Bhupendra Nath Dutta.			
1178	Picture of Kumar Singh.			
1179	4 negatives, one of a picture of a man being			
1 to 4	stabbed.			
1180	A collection of the <i>Samakya</i> and other newspapers			
1 to 22	including the <i>Samarajy</i> and some books.			
1181	Photograph.			
1182	Dolls.			
1183	20 postcards			
1184	A copy of Mukti Kees patha.			
1185	The partition stalla.			
1186	A copy of the			
1187	A copy of the			
1188	A copy of the			
1189	A copy of the			
1190	A copy of the			
1191	A copy of the			
1192	A copy of the			
1193	A copy of the			
1194	A copy of the			
1195	A copy of the			
1196	A copy of the			
1197	A copy of the			
1198	A copy of the			
1199	A copy of the			

1195 to 1197 found in
55-3, Grey Street.

1199	Bhawanee Mandir.			
1200	<i>Mahatma</i> .			
1201	Arany Kothung.			
1202	21 copies of Sivaji Dighya.			
1203	Army Regulation.			
1204	2 copies of Mukti Kone Pathe?			
1205	1 copy of Bartaman Rana Niti.			
1206	27 copies of <i>Mahatma</i> .			
1207	Bengali translation of a speech at Pabna Conference.			
1208	Inana Joga with the name of Kishi Kesh.			
1209	Bengali writing about Pabna Conference.			
1210	Bhawani Mandir in English.			
1211	List of <i>Navasakti</i> articles.			
1212	4 cuttings from <i>Navasakti</i> .			
1213	An English translation of an article			
1214	A letter signed Nomi dada.			
1215	A paper about the <i>Yugantar</i> .			
1216	A list of names.			
1217	A letter dated April 23, 1908 addressed to Nomi dada			
1218	A post card			
1219	A list...			
1220	A note book which contains some formulas			
1221	A manuscript article "an inflammatory appeal to the people"			
1222	A letter addressed to Chakrabarty from H. L. Varma.			
1223	Picture of Bepin Chandra Pal.			
1224	Book of cuttings from <i>Yugantar</i> .			
1225	21 copies of <i>Yugantar</i> of different dates.			
1226	10 copies of <i>Navasakti</i> .			
1227	13 copies of <i>Samdhyā</i> .			
1228	6 copies of <i>Bande Mataram</i> .			
1229	Address of welcome to Bepin Chandra Pal			
		25th Aug. 1908	without	1208 found in Ex 300.
		Ditto	Ditto	Found in Ex 311.
		Ditto	Ditto	1210 to 1220 found in
				10-1, Ram Sankar's Lane
		25th Aug. 1908		

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1220	Bande Mataram stotram ...	25th Aug. 1908.		
1221	Record of the Cr. under Section 107 C. P. C., dated 31st July 1908 (Jamalpur Suit).			
1222	Order of the above case.			
1223	Post card—(written by Nikhileswar to Ganguly and others.)			
1224	A note book (of Monindra Kumar with names and addresses of Debabrata and Indra Nandy).	Ditto	Ditto.	1225 to 1234 found in 10-1, Rani Sankari's Lane.
1225	A post card.			
1226	A book of newspaper cuttings.			
1227	An algebra book...			
1228	A book "Hriday gatha".			
1229	An exercise book.			
1230	Mukti kose pathay ?			
1231	A book Jin Jitsu.			
1232	Prachya and Paschatya.			
1233	Post office Savings Bank Pass Books of Chandra Kanta Chakraborty.			
1234	Rosa bud.			
1235	Ex. 238 including paper	...	Ditto. }	1235 to 1240 found in 30, Murarighat Road.
1236	Lectures of Provash			
1237	...			

1239	paper attached to Ex. 255 (The note of Shishir found in his pocket regarding Purulia distance and the Chandernagar Swadeshi meeting notice. Ex. CXXVIII a cash book containing the prescription for Churn.	1st Sept. 1908.	Without ...	1241-1245 found at 54, Machua Bazar Street.
1240	5 pictures Found in Provash's house"	...	...	...
1241	A list...	Ditto.	...	...
1242	Counterfoil receipt of Rs. 500	Ditto.	...	...
1243	Signatures in the bail bond (with record exhibits 941) is in the handwriting of Nikhuleswar.	Ditto.	...	...
1244	Account book (taken from bundle 381)	...	...	...
1245	(2 note books taken out of exhibits 381).	...	...	...
1246	Prosecutus of Chhatra Bhandar (found in Satish Mukherjee's house).	...	...	...
1247	A type-written letter addressed to 113 Harrison Road.	...	...	...
1248	Three exercise books (with notes of Garibaldi, etc.)	...	...	...
1249	Modern weapons and modern war.	...	...	...
1250	Manual of Military law	...	...	...
1251	Record of case against Fanindra.	...	...	...
1252	Bail bond in the same case.	...	...	...
1253	A letter (found in 30-2, Harrison Road)	...	...	...
1254	A post card found in 30-2, Harrison Road.	...	...	...
1255	A post card found in 30-2, Harrison Road.	...	...	...
1256	Account book ... ..	...	...	...
1257	Six books	Ditto	Ditto	1264 to 1269 found at 58, Manicktola Street.
1258	...	Ditto	Ditto	...
1259	...	...	...	...
1260	...	...	...	...
1261	...	...	...	...
1262	...	...	...	...
1263	...	...	...	...
1264	...	...	...	...
1265	...	...	...	...
1266	...	...	...	...
1267	...	...	...	...

Disin- guishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1268	Six books	3rd Sept. 1908.	Without.	
1269	Two subscription books of <i>Jugantar</i>	Ditto	Ditto.	
1270	"A Manuscript Account book of <i>Mukhi Kone</i>	Ditto	Ditto.	
1271	A book	Ditto	Ditto.	
1272	A book	Ditto	Ditto.	
1273	A paper book	Ditto	Ditto.	
1274	A book	Ditto	Ditto.	
1275	A book containing a prospectus of <i>Narasakti</i> signed by Dehadrata.	Ditto	Ditto.	
1276	A letter from Manaranjan Guha about the <i>Narasakti</i> on the death of Upadhyaya.	Ditto	Ditto.	
1277	A letter	Ditto	Ditto.	
1278	A post-card	Ditto	Ditto.	
1279	A copy of <i>Sonar Bangla</i>	Ditto	Ditto.	
1280	A post-card	Ditto	Ditto.	
1281	A post-card	Ditto	Ditto.	
1282	A post-card	Ditto	Ditto.	
1283	A post-card	Ditto	Ditto.	
1284	A letter in an envelope addressed to Nikhileshwar	Ditto	Ditto.	
1285	A manuscript book	Ditto	Ditto.	
1286	A manuscript book	Ditto	Ditto.	
1287	A manuscript book	Ditto	Ditto.	
1288	A manuscript book	Ditto	Ditto.	
1289	A manuscript book	Ditto	Ditto.	
1290	A manuscript book	Ditto	Ditto.	
1291	A manuscript book	Ditto	Ditto.	
1292	A manuscript book	Ditto	Ditto.	
1293	A manuscript book	Ditto	Ditto.	
1294	A manuscript book	Ditto	Ditto.	
1295	A manuscript book	Ditto	Ditto.	
1296	A manuscript book	Ditto	Ditto.	
1297	A manuscript book	Ditto	Ditto.	
1298	A manuscript book	Ditto	Ditto.	
1299	A manuscript book	Ditto	Ditto.	
1300	A manuscript book	Ditto	Ditto.	

1290	A Cheque-book</
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Disin- guishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1315 1 and 2	Ditto ditto for 1st July 1906 ...	4th Sept. 1908.		
1316 1 and 2	Ditto 2 articles 15th July 1906 ...	Ditto.		
1317 1 and 2	Ditto ditto 29th July 1906 ...	Ditto.		
1318	Ditto ditto 5th August 1906 ...	Ditto.		
1319 1 and 2	Ditto ditto 19th August 1906 ...	Ditto.		
1320 1 and 2	Ditto ditto 19th August 1906 ...	Ditto.		
1321 1 and 2	Ditto ditto 26th August 1906 ...	Ditto.		
1322 1 and 2	Ditto ditto 14th October 1906. (4 articles)...	Ditto.		
1323 1 and 2	Ditto ditto 21st October 1906. (2 articles)...	Ditto.		
1324 1 and 2	Ditto ditto 18th November 1906.			
1325 1 and 2	Ditto ditto and its translation for 25th November	Ditto.		
1326 1 and 2	Ditto ditto 2nd December 1906	Ditto.		

1327 1 and 2	Ditto	ditto	13th January 1907...	...	Ditto	...
1328 1 and 2	Ditto	ditto	3rd February 1907...	...	Ditto	...
1329 1 and 2	<i>Jugantar</i>	and its translation for 3rd March 1907	...	...	Ditto	...
1330 1 and 2	<i>Jugantar</i>	and translation of an article for 7th April 1907.	...	...	Ditto	...
1331 1 and 2	Translation and original article of the <i>Jugantar</i> of 19th May 1907.	...	...	...	Ditto	...
1332 1 and 2	Translation of the original article of <i>Jugantar</i> of 16th November 1907. (3 articles)	...	...	...	Ditto	...
1333 1 and 2	Ditto	ditto 23rd November 1907. (3 articles.)	...	...	Ditto	...
1334 1 and 2	Ditto	ditto 14th December 1907. (2 articles.)	...	...	Ditto	...
1335 1 and 2	Ditto	ditto 21st December 1907.	...	...	Ditto	...
1336 1 and 2	Ditto	ditto 11th April 1907. (5 articles)	...	...	Ditto	...
1337 1 and 2	Translation and original articles in the <i>Sandhya</i> newspaper of 20th April 1907.	...	...	...	Ditto	...
1338 1 and 2	Translation and the original articles in the <i>Sandhya</i> 6th May 1907. (2 articles)	...	...	...	Ditto	...
1339 1 and 2	Ditto	ditto 4th May 1907.	...	...	Ditto	...
1340 1 and 2	Ditto	ditto 15th May 1907. (2 articles.)	...	...	Ditto	...
1341 1 and 2	Ditto	ditto 16th May 1907.	...	...	Ditto	...
1342 1 and 2	Ditto	ditto 17th May 1907. (2 articles.)	...	...	Ditto	...
1343 1 and 2	Ditto	ditto 5th June 1907.	...	...	Ditto	...

Distin- guishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1344 1 and 2 1345 1 and 2	Translation and the original articles in the <i>Sandhya</i> 15th June 1907. (2 articles.) Ditto ditto 15th July 1907.	4th Sept. 1908. Ditto ...	...
1346 1347 1 and 2	Ditto ditto 24th July 1907. Ditto ditto 25th July 1907.	Ditto ... Ditto ...	...
1348 1349 1 and 2	Ditto ditto 3rd August 1907. Ditto ditto 28th August 1907.	Ditto ... Ditto ...	...
1349 1 and 2	Ditto ditto 21st September 1907.	Ditto ...	...
1350 1 and 2	Translation and the original articles from the <i>Navasakti</i> newspaper of the 7th August 1907. ...	Ditto ...	...
1351 1 and 2	Ditto ditto 28th December 1907.	Ditto ...	...
1352 1 and 2	Translation and original article for <i>Navasakti</i> for 27th December 1907.	Ditto ...	...
1353 1 and 2	Ditto ditto 26th December 1907.	Ditto ...	...
1354 1 and 2	Ditto ditto 19th December 1907.	Ditto ...	...
1355 1 and 2	Translation and original article for <i>Navasakti</i> from 10th December 1907.	Ditto ...	...

1353 to 1364 contained
in Part IV. K. 102.

Translation and original articles for <i>Newsweek</i> from		4th Sept. 1908.
1377	13th December 1907.	
1-2	Ditto	31st December 1907.
1378	Ditto	
1-2	Ditto	6th November 1907.
1379	Ditto	
1-2	Ditto	12th ditto.
1380	Ditto	
1-2	Ditto	23rd January 1908.
1381	Chatra Bhandar prospectus...	...
1382	Chatrapati Sivaji	...
1383	Russians in the frontier of India	...
1384	...	...
1385	Twenty Sonar Bangla postcards.	...
1386	Ten English Sonar Bangla post-cards.	...
1387	Seven Ingantar envelopes	...
1388	Three Sachona Press counterfoils receipt-books	...
1-3	Letter form headed Sumati Press Depository	...
1389	Eleven Chatra Bhandar envelopes with address 113,	...
1390	Harrisa Road.	...
1371	A note book with instructions about the torn use	...
	dagger.	...
1372	A letter torn in 3 pieces, containing reference to	...
1-3	the shooting of Mr. Allen addressed to Jiban.	...
1373	A letter addressed to Jiban, dated 24th February	...
	1908, contained in Ex 1374.	...
1374	An envelope	...
1375	A letter	...
1376	A letter	...
1377	A letter	...
1378	A printed envelope addressed to Jogiban Roy	...
	Mouluk, 113, Harrison Road, Calcutta.	...

Distin- guishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1379 to 1390	Twenty-one telegrams	5th Sept. 1908.		
1400	File of <i>Bande Mataram</i>	11th Sept. 1908	Without.	
1401	Declaration of Nokuleshwar Ray Moulik	Ditto ...	Ditto.	
1402	Ditto of Manindra	Ditto ...	Ditto.	
1403	Ditto of Bisheshur Prosanna De...	Ditto ...	Ditto.	
1404	Ditto of Satish Ch. Das	Ditto ...	Ditto.	
1405	Ditto of Keshab Chandra Sen Gupta	Ditto ...	Ditto.	
1406	List of declaration of Printing Presses ...	Ditto ...	Ditto.	
1407 to 1408	A book with the name of Rajani Kanta Sircar A book called "Prescriber" presented with the name of N. Ray Moulik.	11th Sept. 1908	Without ... Ditto.	1407 to 1432 found in the collection of books Ex. 231 which were found at 32, Murrari- puker Road.
1409	Note book with Maulik in first page and border	Ditto ...	Ditto.	
1410	A book with name of Narendra Nath Banerji	Ditto ...	Ditto.	
1411	A book with the name of Birendra Nath Banerjee...	Ditto ...	Ditto.	
1412	A book with the stamp of Gondalpara Reading Club, Chandanagar.	... ..	...
1413	A book with the name of—To Barendra K. Ghose from S. G.	... ..	...
1414	A book with the name of Hemendra Nath Ghose ...	Ditto ...	Ditto.	
1415	A book with the name of Rishi Kesh Kanjilal ...	Ditto ...	Ditto.	

	A book with name of Birendra K. Ghose, Vaidya-nath.	11th Sept. 1908	Widow.
1416	A book with name of Surendra Nath Ghosh ...		
1417	A book with name of Jotindra Nath Nag, 26th January 1908, and on a later page presented to Almonoti Samiti by Jotindra Mohan Nag, 4th February 1908.	Ditto	Ditto.
1418	A book with initial N. N. Buxi, Inatpur, Rajshahi, 1908.	...	Ditto.
1419	A book with name of Kristo Jiban Sanyal ...	...	Ditto.
1420	A book with name of Debendra Nath Bose ...	Ditto	Ditto.
1421	A book with name of Bibhuti Bhushan Sircar ...	Ditto	Ditto.
1422	A book Rangpur Bandhab Samiti and Surendra M. Baisnab.	Ditto	Ditto.
1423	A book with the stamp Babu Ram Chandra Mukherjee's family library.		
1424	A book with the name of Dr. S. C. Nandi, L.M.S.		
1425	A book called Jogsadhan with a stamp name Kabiraj Nagendra Gupta, Kabibhusan, 134, Harrison Road.		
1426	A book Bhelki with the name of "Srijukta Babu Indra Nath Nandi," College Square.		
1427	A book with the name Bibhuti Bhushan Sirkar.		
1428	A book with the stamp Manager, <i>Jugantar</i> , 41, Champatola 1st Lane, Calcutta.		
1429	A book with stamp <i>Jugantar</i> Office, Calcutta.		
1430	A book with Chuni on 1st page, Nobin on 3rd page.		
1431	A book with the name of Jogendra Nath Das, Khulna Zilla School.		
1432	A letter which was found in Ex. No. 541.		
1433	Letter found in Ex. 541.		
1434	Post-card signed by Sanjib Chatterjee found in Ex. 568.		
1435			

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS
- 1 -	2	3	4	5
1436	A letter found in Ex. 538.			
1437	An envelope found in bundle Ex. 538.			
1438	Letter found in envelope contained in 1437.			
1439	A tin pot.			
1440	Two pairs of shoes.			
1441	Declaration by Kartic Nan 24th November 1905.			
1442	Ditto Behary Chakrabarty 30th June 1908.			
1443	Ditto Nikungo Lal 16th November 1906.			
1444	Ditto Bistupado Sen 30th September 1907.			
1445	Ditto Birendra Banerjee 21st May 1908.			
1446	Ditto Fanandra Mittra 4th March 1908.			
1447	A box containing revolvers, daggers, revolvers and rifle, shot cartridges etc. (referred in Ex. 104)			
	" 4 Rajas Lane.			
	Some handwriting of Barindra Kumar Ghose (W. S. Police).			
	Declaration by Hari Chandra Das 18th August 1907.			
	Ditto ditto 22nd November 1907.			
	Ditto Manobendra Chatterjee 19th February 1908.			
	Ditto Manobendra Chatterjee 19th February 1908.			

1444	Declaration by Monmohon Ghose 19th February 1908.
1454	Ditto Fanindra Mittra 19th February 1908.
1455	Ditto Satya Ranjan Guha 15th May 1907.
1456	Judgment—Emp. v. Barindra Ghose under Arms. Act, 18th July 1908.
1457	Postman's visit book, Rohny Post office.
1457a	Entry 18th March 1908 in the above book.
1458	New India Paper 20th May 1905.
1459	Ditto ditto October '05.
1460	A Bundle of 'New India' Paper (83 in number).
1461	M. O. No. 51 to Purna Chandra Sen sent by Jogendra Sen.
1461a	Entry of M. O. No. 951 in the M. O. Register.
1462	File of Bande Mataram newspaper.
1463	Receipt for Rs. 3/6/- for two huts, 13th January 1915.
1464	Bartaman Rana-Niti
1464a	Ditto in print
1465	Prospectus National Council of Education, Bengal.
1465	Order book for "the Kamala Printing Works"
1466	Record of the Case Emp. v. Manik Lal Dey & others
1467	Phial of cartridges marked for identification.
1468	Some sheets of a Railway Time Table
1469	Deposition of Abdur Rahaman before the committing Magistrate
1470	M. O. for Rs. 25/- 10th April 1908 in the name of Arabinda Ghose.
1471	L. C. deposition of Aju Baks Singh.
1472	Two files of receipts.
1473	Bail application of B. K. Kane at Nagpur.
1474	Magistrate's order, 21st July 1908.
1475	
1476	

Distinguishing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1476	Vakalatnama of B. K. Kane. Sessions Court Judgment. Emp. v. Khudi Ram Bose.			
1477	High Court Judgment in ditto			
1478	Extract from an article from "Englishman."			
1479	Translation of Mukti Kone Pathe.			
1480	Mukti Kone Pathe.			
1481	Time Table.			
1482	Ditto.			
1483	Ditto.			
1484	Conviction and charges against Nagendra and others under Arms Act in High Court.			
1485	Lower Court Deposition of Tarak Chandra Palit.			
1486	Notes of Deputy Magistrate S. K. Das Gupta on identification of Kane in Jail (kept with Ex. U. U.)			
1487	Notes of Deputy Magistrate N. L. Bagchi on identification of Ullaskar,			
1488	Yugantar, 19th August 1907.			

1488 1488 1488	Translation "Our Hope in above issue. Ditto "going shares in keeping house in above issue Ditto "True aspect of English" in above issue
1489 1489 1489 1490 1490 1490 1491	Article "Worship of the 'false'" in Yugantar 5th August 1907. Translation of ditto Article "False fear in Jugantar 6th July 1907 Translation of ditto Ditto of another article in ditto. Article "Bloodshed in Jugantar office" in Sandhya, 8th August 1907.
1491 1491 1492 1492 1492 1492	Translation of ditto. "Tit for Tat" in Sandhya, 9th August 1907 Ditto Translation in ditto Translation of "a couple of goat at Kalghat to-day are black one white" in same issue.
1493 1493 1493 1493 1494 1494 1495 1495 1495 1496 1496 1497 1497 1497	Sandhya, 12th August 1907 Translation of article "Boycott celebration at Kalighat" in above issue. Translation of article 'Rejoinder' in above issue. Sandhya, 13th August 1907 Translation of "This time we have missed the obligation of love" in above issue. Sandhya of 20th August 1907. Translation of article "The real significance of the activity in making arrests for sedition" in above. Sandhya of 21st August 1907 Translation of article "most merciful in the Ferenghee" Sandhya of 23rd August 1907 Translation of article "The darlings are all taking me to Sri Brundaban" in above issue.

Dis- tingu- ish- ing mark or number.	DESCRIPTION OF ARTICLES.	Date of admission.	Whether admitted after or without objection.	REMARKS.
1	2	3	4	5
1498 1498 1-3 1499 1500 1501 1502 1503 1-6 1504 1505	<p>A copy of Yugantar of 16th June 1907. Translation of article "dispelling of Fear" and "Lathi as a remedy." High Court Judgment in Narsingarh case, 24th February 1909. Tattoo mark in the hand of Ram Das Chukraburty shown in a paper. Copy of Judgment in the case of Sailendra Bose, Sec. 332 I. P. C. Copy of Judgment in the case of Phanindra Nath Mitra. Moti Lal Varma's diaries. Government notification re warning to seditious newspaper. Extract from tour programme of L. G.</p>			

Defence Exhibits.

- A.—Duplicate copy of search list marked Ex. 29/1-3.
- B.—Envelope with "On Her Majesty's Service".
- C.—Deposition of S. I. Satis Banerjea, P. W. 185, Lower Court
- D.—Do. Abdul Noor, P. W. 18, Do.
- E.—Application of P. C. Biswas to Chief Presidency Magistrate, dated 5th May 1908.
- F.—Police chalan, dated 10th June 1908.
- G.—A pencil plan, dated 21st November 1908.
- H.—Deposition of Superintendent Cregan, P. W. 2, (1st batch).
- H/1,—Do. do. (2nd batch).
- I.—Search warrant, dated 1st May 1908.
- J.—Search warrant, dated 1st May 1908.
- J/a.—Do. dated 2nd May 1908.
- J.—Deposition of Superintendent Merriman, P. W. 3, Lower Court.
- K.—Do. do. Boman, P. W. 6. do.
- L.—Search warrant.
- M.—Do.
- N.—Petition of Inspector Samsul Alum, dated 2nd July 1908.
- O.—Deposition of Insp Lyons, P. W. 9 (2nd batch), Lower Court.
- P.—Do. Kaminy Bhattacharya, P. W. 178, before Mymensingh Court, Sec. 107.
- Q.—Do. Insp P. C Lahiry, P. W. 172, Lower Court.
- R.—Do. Tar.ny Routh, P. W. 154, do.
- S & S/1.—Do. Insp. Percy, P. W. 30, do. (both batches).
- T.—Do. Insp. Major, P. W. 20, do. (2nd batch).
- U.—Do Insp. Nagesh Mookerjea, P. W. 82, do.
- V.—Post card to Akshay Maitra, (Found at Tamluq).
- W.—Deposition of S. I. Chand Mukerjea, P. W. 147, Lower Court.
- X. & X/1.—Do. S I Suresh Ghose, P. W. 120, do. (both batches,
- Y.—Do. Insp. Narendra Mullik, P. W 91, do.
- Z.—Do. Sivakali Das, P. W 90 do.
- A A.—Photo of 37, College Street.
- B.B.—Deposition of Nurse Burke, P. W. 3, (2nd batch),

- C C & C.C /t—Do. Bolai Ganguly, Lower Court (both batches).
 D.D.— Do. Sarat Ch. Das, P. W. 7, Lower Court.
 E.E.—Photo of a group with Arabinda.
 E.E./t—A leaflet in Marhatta giving notice of Dhulia meeting.
 I.F.—Deposition of Manikram, P. W. 130, Lower Court.
 G.G.—Entry No. 868, dated 2nd May 1908 in case Register, Maniktola Thana.
 H.H.—Post card out of bundle No. 541.
 I.I.—Deposition of Profulla Chaki, in Lower Court.
 J.J.— Do. Jatindra Lahiry, Lower Court.
 K.K.— Do. Kisory Banerjea, do.
 L.L.— Do. Fateh Singh, before S. I., Mozaffarpur, dated 11th June 1908.
 M.M.— Do. Adinath Roy Choudhury, Lower Court (2nd batch).
 N.N.— Do. Ramgolam, P. W., 128, do.
 O.O.— Do. Malik Fazle Huq, do.
 P.P. & P.P./a—Deposition of Ghanashyam Dass, do. (both batch).
 Q.Q.—Deposition of Potadin Tewary, Lower Court.
 R.R.— Do S. I., Satish Roy, do.
 S.S.—Report of identification in jail
 T.T.—Deposition of Alijan, Lower Court
 U.U.—Order of District Magistrate, dated 2nd April 1908, on Insp., Alum's petition.
 V.V.— Do. do. dated 28th July 1908, on Kane's identification report,
 W.W. & W.W./t—Two depositions of Insp., B. Gupta in Lower Court.
 X.X.—Note book of Mr. Denham.